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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **7 CFR 1940.301** *refers to title 7, part 1940, section 301.*

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Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
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Martha L. Girard,
Director,
Office of the Federal Register.

January 1, 1991.

THIS TITLE

Title 7—AGRICULTURE is composed of nineteen volumes. The parts in these volumes are arranged in the following order: Parts 0-26, Parts 27-45, Parts 46-51, Part 52, Parts 53-209, Parts 210-299, Parts 300-399, Parts 400-699, Parts 700-899, Parts 900-999, Parts 1000-1059, Parts 1060-1119, Parts 1120-1199, Parts 1200-1499, Parts 1500-1899, Parts 1900-1939, Parts 1940-1949, Parts 1950-1999, and Part 2000-End. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1991.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing Parts 900-999. All marketing agreements and orders for milk appear in three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

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For this volume Linda L. Jones was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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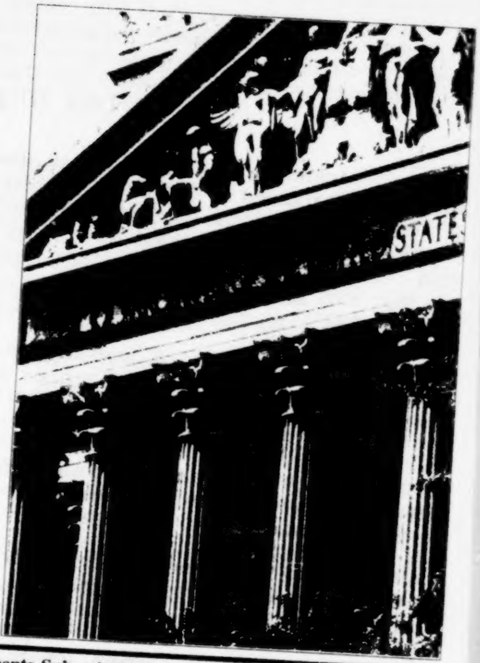

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Title 7—Agriculture

(This book contains Parts 1940 to 1949)

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EDITORIAL NOTE: Nomenclature changes affecting Chapter XVIII appear at 39 FR 14499, Apr. 24, 1974.

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AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subparts A—F [Reserved]

Subpart G—Environmental Program

SOURCE: 53 FR 36240, Sept. 19, 1988 , unless otherwise noted.

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA). It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA decision-making process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500-1508. CEQ's regulations will not be repeated in this subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable sections of the regulations will be provided. The CEQ regulations will be available at all FmHA offices.

(c) This subpart is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law, or by Agency practice, so that all such procedures run concurrently rather than consecutively. The environmental document, which results from the implementation of this subpart, provides on a project basis a single reference point for the Agency's compliance and/or implementation of the following requirements and policies:

(1) The National Environmental Policy Act, 42 U.S.C. 4321;

(2) Safe Drinking Water Act—Section 1424(e), 42 U.S.C. 300h;

(3) Endangered Species Act, 16 U.S.C. 1531;

(4) Wild and Scenic Rivers Act, 16 U.S.C. 1271;

(5) The National Historic Preservation Act, 16 U.S.C 470 (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(6) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(7) Coastal Zone Management Act—Section 307(c) (1) and (2), 16 U.S.C. 1456;

(8) Farmland Protection Policy Act, Subtitle I, Pub. L. 97-98;

(9) Coastal Barrier Resources Act, Pub. L. 97-348;

(10) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(11) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(12) Executive Order 11988, Floodplain Management;

(13) Executive Order 11990, Protection of Wetlands;

(14) Title 7, Parts 1b and 1c, Code of Federal Regulations, Department of Agriculture's National Environmental Policy Act; Final Policies and Procedures;

(15) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(16) Title 7, Part 658, Code of Federal Regulations, Department of Agriculture, Soil Conservation Service, Farmland Protection Policy;

(17) Title 87, Part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation;

(18) Departmental Regulation 9500-3, Land Use Policy (See Exhibit A of this subpart);

(19) Departmental Regulation 9500-4, Fish and Wildlife Policy.

(d) The primary objectives of this subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA applicants, other Federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decisionmaking processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points, and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to ensure that Agency decisions are based on an understanding of their environmental consequence, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort, and superfluous analyses are provided for in this subpart. FmHA environmental documents are to be supported by accurate analyses and will concentrate on the issues that are timely and relevant to the action in question, rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other Federal or State agencies jointly participating in proposed actions or related actions, in order to avoid duplication of effort, and to achieve a coordinated and timely response.

(f) Public involvement is desirable, and to facilitate public involvement, environmental documents will be available to interested citizens as early in the decisionmaking process as possible and before decisions are made. Provisions are included for citizens or interested parties to express their views and any concerns.

(g) The FmHA officials responsible for the environmental review process are identified.

(h) The FmHA actions covered by this subpart include:

(1) Financial assistance to include grants, loans, and guarantees,

(2) Subdivision approvals,

(3) The management, leasing and sale of inventory property, and

(4) Other major federal actions such as proposals for legislation and the issuance of regulations.

§ 1940.302 Definitions.

Following is a list of definitions that apply to the implementation of this subpart. Please note that § 1940.301(b) of this subpart refers to the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500–1508. Consequently, the definitions contained in Part 1508 of the Council's regulations apply to this subpart, as well as those listed below.

(a) *Emergency circumstance.* One involving an immediate or imminent danger to public health or safety.

(b) *Environmental review documents.* The documents required by this subpart for the purpose of documenting FmHA's compliance with the environmental laws and regulations applicable to the FmHA actions covered in this subpart. These documents include:

(1) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions,"

(2) Form FmHA 1940-21, "Environmental Assessment of Class I Action,"

(3) Environmental Assessment for Class II Actions (Exhibit H of this subpart), and

(4) Environmental Impact Statements (EIS).

(c) *Flood or flooding.* A general and temporary condition of partial or complete inundation of land areas, from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source. Two important classifications of floods are as follows.

(1) A one-percent chance flood or based flood—A flood of a magnitude that occurs once every 100 years on the average. Within any one-year period there is one chance in 100 of the occurrence of such a flood. Most importantly, however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20-year period, the length of time commonly defined as the useful life of a facility. Over a 30-year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

(2) A 0.2-percent chance flood—A flood of a magnitude that occurs once every 500 years on the average. (Within any one-year period there is one chance in 500 of the occurrence of such a flood.) As with the one-percent chance flood, the cumulative risk of this flood occurring also increases with time.

(d) *Floodplains.* Lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands. At a minimum, floodplains consist of those areas subject to a one percent or greater chance of flooding in any given year. The term floodplain will be taken to mean the base floodplain, unless the action involves a critical action, in which case the critical action floodplain is the minimum floodplain of concern.

(1) Base floodplain (or 100-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 100 years on the average (the flood having a one-percent chance of being equalled or exceeded in any given year).

(2) Critical action floodplain (or 500-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 500 years on the average (the flood having 0.2-

percent chance of being equalled or exceeded in any given year).

(e) *Indirect impacts.* Those reasonably foreseeable environmental impacts that result from the additional public facility, residential, commercial, or industrial development or growth that a federally financed project may cause, induce or accommodate. Consequently, indirect impacts often occur later in time than the construction of the Federal project and can be removed in distance from the construction site. For example, a water transmission line may be designed to serve additional residential development. The environmental impacts of that residential development represent an indirect impact of the federally funded water line. Those indirect impacts which deserve the greatest consideration include changes in the patterns of land use, population density or growth rate, and the corresponding changes to air and water quality and other natural systems.

(f) *Mitigation measure.* A measure(s) included in a project or application for the purpose of avoiding, minimizing, reducing or rectifying identified, adverse environmental impacts. Examples of such measures include:

(1) The deletion, relocation, redesign or other modifications of the project's elements;

(2) The dedication to open space of environmentally sensitive areas of the project site, which would otherwise be adversely affected by the action or its indirect impacts;

(3) Soil erosion and sedimentation plans to control runoff during land-disturbing activities;

(4) The establishment of vegetative buffer zones between project sites and adjacent land uses;

(5) Protective measures recommended by environmental and conservation agencies having jurisdiction or special expertise regarding the project's impacts;

(6) Storm water management plans to control potential downstream flooding effects that would result from a project;

(7) Zoning; and

(8) Reuse of existing facilities as opposed to new construction.

(g) *No-action alternative.* The alternative of not approving an application for financial assistance, a subdivision feasibility analysis, or an Agency proposal.

(h) *Practicable alternative.* An alternative that is capable of attainment within the confines of relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal, social and technological parameters. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. That is, alternatives cannot be rejected solely on the basis of moderately increased costs. The range of alternatives that must be analyzed to determine if a practicable alternative exists includes the following three categories of alternatives:

(1) Alternative project sites or designs,

(2) Alternative projects with similar benefits as the proposed actions, and

(3) The no-action alternative.

(i) *Preparer of Environmental Review Documents.* The FmHA official who is responsible for reviewing the potential environmental impacts of the proposed action and for completing the appropriate environmental review document. Under the circumstances indicated, the following Agency positions and divisions will act as the preparer of the environmental review documents covered by this subpart.

(1) *County Office.* When the approval official for the action under review is located at the County Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments.

(2) *District Office.* When the approval official for the action under review is located at the District Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments or may delegate this responsibility to either:

(i) The District Office staff member having primary responsibility for assembling the associated pre-application, application or other case materials, analyzing the materials and developing recommendations for the approval official, or

(ii) A County Office staff member having the same responsibilities as the District Office member, if the action is initiated at the County Office level.

(3) *State Program Chief.* For actions approved within the State Office, the Chief will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and II assessments or may delegate this responsibility to either:

(i) The appropriate State Office Loan Specialist, if not the State Environmental Coordinator (SEC),

(ii) An architect or engineer on the Chief's staff who is not the SEC, or

(iii) A District or County Office staff member located within the office in which the action is initiated and having the responsibilities outlined in paragraph (i)(2)(i) of this section.

(4) *State Environmental Coordinator.* EIS's for actions within the approval authority of County Supervisors, District Directors, and State Office officials.

(5) *Assistant Administrators for Programs.* Checklists, assessments, and EIS's for all actions initiated within their program office.

(6) *Program Support Staff.* Checklists, assessments, and EIS's that the Deputy Administrator for Program Operations requests be done.

(j) *Water resource project.* Includes any type of construction which would result in either impacts on water quality and the beneficial uses that water quality criteria are designed to protect or any change in the free-flowing characteristics of a particular river or stream to include physical, chemical, and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers or streams, as well as projects involving withdrawals from, and discharges into such rivers or streams. Projects which require Corps of Engineers dredge and fill permits are also water resource projects.

§ 1940.303 General policy.

(a) FmHA will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes.

(b) In assessing the potential environmental impacts of its actions, FmHA will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with both the technical and human aspects of environmental planning.

(c) When adverse environmental impacts are identified, either direct or indirect, an examination will be made of alternative courses of action, including their potential environmental impacts. The objective of the environmental review will be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal will also be considered particularly with respect to the need for the proposal.

(d) If no feasible alternative exists, including the no-action alternative, measures to mitigate the identified adverse environmental impacts will be included in the proposal.

(e) The performance of environmental reviews and the consideration of alternatives will be initiated as early as possible in the FmHA application review process so that the Agency will be in the most flexible and objective position to deal with these considerations.

§ 1940.304 Special policy.

(a) *Land use.* (1) FmHA recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to Departmental Regulation 9500-3, Land Use Policy, which is included as Exhibit A of this subpart. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as Exhibit J of this subpart, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as Exhibit K of this subpart. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that

(i) There is no practicable alternative to the proposed action,

(ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and

(iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(A) For Farmer Program loans and guarantees, and loans to Indian Tribes and Tribal Corporations, Exhibit M of this subpart imposes additional and more restrictive requirements regarding wetland and highly erodible land conservation.

(B) Unless otherwise exempted by the provisions of Exhibit M, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA cannot be used

(*1*) For a purpose that will contribute to excessive erosion of highly erodible land (as defined in Exhibit M), or

(*2*) For a purpose that will contribute to conversion of wetlands (as defined in Exhibit M) to produce an agricultural commodity.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its central business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable, and to avoid their occurrence, projects designed to meet rural community needs (i.e., residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met.

(i) The project is planned and sited in a manner consistent with the policies of this section, the Farmland Protection Policy Act, and Departmental Regulation 9500-3 (Exhibit A of this subpart).

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA requirement that they either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to these areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs, and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects will be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding paragraph (a)(2)(ii) of this section, which would not be applicable).

(b) *Endangered species.* FmHA will not authorize, fund, or carry out any proposal or project that is likely to

(1) Jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or

(2) Destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA has been granted an exemption for such proposal by the Endangered Species Committee pursuant to paragraph (h) of section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA will not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA will not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* As part of the environmental review process, FmHA will identify any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of Subpart F of Part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA will not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless

(1) Such activity meets the criteria for an exception, as defined in section 6 of the Act, and

(2) Consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA will encourage the conservation of water and energy in the development of its programs and policies and will encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA will advocate, in cooperation with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses

(1) Are caused or encouraged by actions or programs of a Federal Agency, or

(2) Require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

(h) *Water quality.* FmHA will not provide financial assistance to any activity that would either impair a State water quality standard, including designated and/or existing beneficial uses that water quality criteria are designed to protect, or that would not meet antidegradation requirements.

§ 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this subpart serves as the primary mechanism for FmHA as follows:

(1) Incorporating environmental quality considerations into FmHA program and decision-making processes,

(2) Obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA projects, and

(3) Using all practicable means to avoid or to minimize any possible adverse environmental effects of FmHA actions.

(b) *Natural resource management.* The State Director will develop a natural resource management guide. This guide will serve as an essential mechanism for implementing § 1940.304 of this subpart; and, therefore, the guide must be consistent with and reflect the objectives and policies contained in § 1940.304 of this subpart. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The guide will be issued as a State Supplement for prior approval. The basic content, purposes, and uses of the guide are enumerated in Exhibit B of this subpart and can be summarized as follows:

(1) The guide will serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(2) The guide will summarize the various standards or types of Federal, State, or local protection that apply to the natural resources, land uses, and environmental factors listed in the inventory; and

(3) Applications for individual projects must be reviewed for consistency with the guide.

(c) *Intergovernmental initiatives.* When commenting on proposed Federal actions subject to environmental impact statements, FmHA commentors will focus on the consistency of these actions with the appropriate State natural resource management guide. A similar focus or element will be addressed in FmHA's review of the Environmental Protection Agency's 201 Wastewater Management Plans.

(d) *Farmland Protection Policy Act and Departmental Regulation 9500-3, Land Use Policy.* The natural resource management guide serves as a tool for implementing the requirements of the Act and the Departmental Regulation at the broad level of implementing the Agency's programs at the State level. These requirements must also be followed in the review of applications for financial assistance or subdivision approval, as well as the disposal of real property. FmHA's implementation procedures for the project review process are contained in Exhibit C of this subpart.

(e) *Endangered Species.* FmHA will implement the consultation procedures required under section 7 of the Endangered Species Act as specified in 50 CFR Part 402. It is important to note that these consultation procedures apply to the disposal of real property and all FmHA applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental assessments. FmHA's implementation procedures are contained in Exhibit D of this subpart.

(f) *Wild and scenic rivers.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it will affect a river or portion of it, which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior (DOI). FmHA's procedures for completing this review are contained in Exhibit E of this subpart.

(g) *Historic and cultural properties.* (1) As part of the environmental review process, FmHA will identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places, and located within the area of potential environmental impact. Identification will consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). Since it is not always possible from the consultation with the SHPO to determine whether historic and cultural properties are present within the project's area of environmental impact, it may be necessary for FmHA to consult public records and other individuals and organizations, such as university archaeologists, local historical societies, etc. These latter discussions should take place before initiating a detailed site survey since they may provide reliable information that obviates the need for a survey. However, whenever insufficient information exists to document the presence or absence of potentially eligible National Register properties and where the potential for previously unidentified properties is recognized by FmHA, the SHPO, or other interested parties, FmHA will conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archaeological testing, studies or surveys conducted to investigate the presence of such properties and will utilize persons with appropriate knowledge and experience.

(2) If the information obtained, as a result of the consultation and investigations conducted by FmHA, indicates the presence of an historic or cultural property within the area of potential environmental impact that, in the opinion of the SHPO and FmHA, appear to meet the National Register Criteria (36 CFR 60.4), the property will be considered eligible for the National Register of Historic Places. If the SHPO and FmHA do not agree on the property's eligibility for the National Register or if the Secretary of the Interior or the Advisory Council on Historic Preservation so requests, FmHA will request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 63. Consultations will be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR Part 800, through the implementation of Subpart F of Part 1901 of this chapter, to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in Subpart F of Part 1901 of this chapter. These procedures will be followed whenever a proposal, considered by FmHA, has the potential to affect National Register or eligible properties.

(h) *Coastal barriers.* In those States having coastal barriers within the Coastal Barrier Resources System, each application for financial assistance or subdivision approval, as well as the proposed disposal of real property, will be reviewed to determine if it would be located within the system, and, if so, whether the action must be denied on this basis or meets the Act's criteria for an exception. To accomplish the review, all affected State, District and County Offices will maintain a current set of maps, as issued by DOI, which depict those coastal barriers within their jurisdiction that have been included in the system. FmHA's implementation procedures for accomplishing this review requirement and for consulting as necessary with DOI are contained in Exhibit F of this subpart. The exceptions to the restrictions of the Coastal Barrier Resources Act are contained in Exhibit L of this subpart.

(i) *Water and energy conservation.* Water and energy conservation measures will be considered at both the program and project level in a manner consistent with program regulations.

(j) *Noise abatement.* For purposes of assessing noise impacts and for determining the acceptability of housing sites in terms of their exposure to noise, FmHA has adopted and follows the standards and procedures developed by the U.S. Department of Housing and Urban Development (HUD) and contained in 24 CFR Part 51 of Subpart B entitled, "Noise Abatement and Control."

(k) *Water quality.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it would impair a State water quality standard or meet antidegradation requirements. When necessary, the proposed activity will be modified to protect water quality standards, including designated and/or existing beneficial uses that water quality criteria are designed to protect, and meet antidegradation requirements.

§ 1940.306 Environmental responsibilities within the National Office.

(a) *Administrator.* The Administrator of FmHA has the direct responsibility for Agency compliance with all environmental laws, Executive orders, and regulations that apply to FmHA's program and administrative actions. As such, the Administrator ensures that this responsibility is adequately delegated to Agency staff and remains informed on the general status of Agency compliance, as well as the need for any necessary improvements. The Administrator is also responsible for ensuring that the Agency's manpower and financial needs for accomplishing adequate compliance with this subpart are reflected and documented in budget requests for departmental consideration.

(b) *Deputy Administrator Program Operations.* (1) The Deputy Administrator for Program Operations has the delegated overall Agency responsibility for developing and implementing environmental policies and compliance procedures, monitoring their effectiveness, and advising the Administrator on the status of compliance, to include recommendations for any necessary changes in this subpart. The incumbent is also responsible for developing and documenting, as part of the Agency's budget formulation process, the manpower and financial needs necessary to implement this subpart.

(2) The specific responsibilities of the Deputy Administrator—Program Operations are as follows:

(i) Provide for the Agency an interdisciplinary approach to environmental impact analysis and problem resolution, as required by the CEQ regulations;

(ii) Provide the leadership and technical expertise for the implementation of the Agency's environmental policies with special emphasis being placed on those policies relating to natural resource management, energy conservation, and orderly community development;

(iii) Coordinate the implementation of this subpart with affected program offices;

(iv) Provide policy direction and advice on the implementation of this subpart to Agency staff, particularly to SECs and technical support personnel within State Offices;

(v) Consult and coordinate, as needed or upon request, with the Department's interagency committees dealing with environmental, land use, and historic preservation matters;

(vi) Monitor the Agency's record in complying with this subpart;

(vii) Provide training programs and materials for the Agency staff assigned the functions identified in this subpart;

(viii) Review, as necessary, applications for funding assistance, proposed policies and regulations, and recommend their approval, disapproval, or modification after analyzing and considering their anticipated adverse environmental impacts, their benefits, and their consistency with the requirements of this subpart;

(ix) Develop and direct Agency procedures for complying with environmental legislation, Executive orders, and regulations, including, but not limited to, those listed in § 1940.301(c) of this subpart;

(x) Maintain a position identified as the Senior Environmental Specialist (hereafter called the Environmental Specialist), who will serve as the responsible Agency official under the National Environmental Policy Act and the National Historic Preservation Act, maintain liaison on environmental matters with interested public groups and Federal agencies, and serve as the focal point for developing and coordinating the Agency's procedures for the requirements listed in § 1940.301(c) of this subpart; and

(xi) Review and evaluate legislative and administrative proposals in terms of their environmental impact.

(c) *Assistant Administrators for Programs.* The Assistant Administrators for Programs will:

(1) Ensure, as necessary, that environmental assessments and EISs for proposed program regulations are prepared by their staff;

(2) Ensure that all proposed actions that fall under the requirements of this subpart, and that are submitted to the National Office for approval or concurrence, contain adequate analyses and documentation of their potential environmental impacts (Transfer of program funds from National Office to State Office control to enable the State Office to approve an application is not considered to be National Office approval of or concurrence in an application);

(3) Consider and include, in the development of program regulations, feasible policies and mechanisms that promote program goals in a manner that either enhances environmental quality or reduces unnecessary adverse environmental impacts; and

(4) Designate one or more staff members to serve as a program environmental coordinator, having generally the same duties and responsibilities within the program office as the SEC has within the State Office (See § 1940.307(b) of this subpart).

§ 1940.307 Environmental responsibilities within the State Office.

(a) *State Director.* The State Director will:

(1) Serve as the responsible FmHA official at the State Office level for ensuring compliance with the requirements of this subpart; and

(2) Appoint one individual to serve as the SEC. Thereafter, the SEC will report directly to the State Director on the environmental matters contained in this subpart.

(b) *State Environmental Coordinator (SEC).* The SEC will:

(1) Act as advisor to the State Director on environmental matters and coordinate the requirements of this subpart;

(2) Review those Agency actions which are not categorically excluded from this subpart (see §§ 1940.311 and 1940.312 of this subpart) and which require the approval and/or clearance of the State Office and recommend to the approving official either project approval, disapproval, or modification after analyzing and considering the—

(i) Anticipated adverse environmental impacts,

(ii) The anticipated benefits, and

(iii) The action's consistency with this subpart's requirements;

(3) Represent the State Director at conferences and meetings dealing with environmental matters of a State Office nature;

(4) Maintain liaison on State Office environmental matters with interested public groups and local, State, and other Federal agencies;

(5) Serve as the State Director's alternate on State-level USDA committees dealing with environmental, land use and historic preservation matters;

(6) Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office in order to adequately implement this subpart;

(7) Provide technical assistance as needed on a project-by-project basis to State, District, and County Office staffs;

(8) Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation;

(9) Provide assistance in resolving post-approval environmental matters at the State Office level;

(10) Maintain records for those actions required by this subpart;

(11) Coordinate for the State Director the development of the State Office natural resource management guide;

(12) Provide direction and training to State, District, and County Office staffs on the requirements of this subpart; and

(13) Coordinate for the State Director the monitoring of the State Office's compliance with this subpart and keep the State Director advised of the results of the monitoring process.

(c) *Program Chiefs.* State Office Program Chiefs will:

(1) Be responsible for the adequacy of the environmental impact reviews required by this subpart for all program actions to be approved at the State Office level or concurred in at that level;

(2) Coordinate the above reviews as early as possible with the SEC, so that the latter can assist in addressing the resolution of any unresolved or difficult environmental issues in a timely manner; and

(3) Incorporate into projects and actions measures to avoid or reduce potential adverse environmental impacts identified in environmental reviews.

§ 1940.308 Environmental responsibilities at the District and County Office levels.

(a) The District Director will be responsible for carrying out the actions required by this subpart to be completed at the District Office level.

(b) The County Supervisor will be responsible for carrying out the actions required by this subpart to be completed at the County Office level.

(c) In discussing FmHA assistance programs with potential applicants, District Directors and County Supervisors will inform them of the Agency's environmental requirements, as well as the environmental information needs and responsibilities that FmHA applicants are expected to address. (See § 1940.309 of this subpart.)

§ 1940.309 Responsibilities of the prospective applicant.

(a) FmHA expects applicants and transferees (*and in the case of the loan guarantee programs, borrowers and transferees*) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA's environmental requirements as soon as possible after they decide to pursue FmHA financial assistance.

(b) As specified in paragraph (c) of this section, applicants for FmHA assistance will be required to provide information necessary to FmHA to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant will be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant will also be required to provide data on any expected gaseous, liquid and solid wastes to be produced, including hazardous wastes as defined by the Resource Conservation and Recovery Act or State law, and all permits and/or correspondence issued by the appropriate local, State, and Federal agencies which regulate treatment and disposal practices.

(c) Form FmHA 1940-20, "Request for Environmental Information," will be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this subpart. These same applicants must notify the appropriate State Historic Preservation Officer of the filing of the application and provide a detailed project description as specified in Item 2 of Form FmHA 1940-20 and the FMI. If the applicant's proposal meets the definition of a Class II action as defined in § 1940.312 of this subpart, all of Form FmHA 1940-20 must be completed. If the applicant's proposal meets the definition of a Class I action as defined in § 1940.311 of this subpart, the entire form need not be completed, but just the face of the form and categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI. As an exception to the foregoing statement, an applicant for an action that is normally categorically excluded but requires a Class I assessment for any of the reasons stated in § 1940.317(e) of this subpart is not required to complete Form FmHA 1940-20. Additionally, for Class I actions within the Farm Programs, a site visit by the FmHA official completing the environmental assessment obviates the need for the applicant to complete any of the form, and the adoption by FmHA of a Soil Conservation Service (SCS) environmental assessment or evaluation for the action obviates the need to complete the form for either a Class I or Class II action.

(d) Applicants will ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FmHA office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA.

(e) During the period of application review and processing, applicants will not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

(f) Applicants are required to provide public notification and to fully cooperate in holding public information meetings as described in §§ 1940.318(e), 1940.320 (c) and (g), and 1940.331 (b) and (c) of this subpart.

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA under this subpart may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter.

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

(a) *General guidelines.* The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in §§ 1940.303 through 1940.305 of this subpart or from compliance with other applicable local, State, or Federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from further review depending upon whether in some cases they would be located within, or in other cases, potentially affect:

(1) A floodplain,

(2) A wetland,

(3) Important farmlands, or prime forestlands or rangelands,

(4) A listed species or critical habitat for an endangered species,

(5) A property that is listed on or may be eligible for listing on the National Register of Historic Places,

(6) An area within an approved State coastal zone management program,

(7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System,

(8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System,

(9) A sole source aquifer recharge area, or

(10) A State water quality standard (including designated and/or existing beneficial uses and antidegradation requirements).

(i) Whether location within one of the preceding resource areas is sufficient to require a further review or a potential impact to one of them must also be identified to require a review is determined by FmHA's completion of Form FmHA 1940-22 in accordance with the FMI and § 1940.317 of this subpart.

(ii) When the categorical exclusion classification is lost, as specified in § 1940.317 of this subpart, the action must be reviewed under the requirements of paragraph (g) of that section. This requirement serves to implement § 1508.4 of the CEQ regulations which requires Federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(iii) Further guidance on the use of these exclusions is contained in § 1940.317 of this subpart.

(b) *Housing assistance.* *(1) The provision of financial assistance for the purchase of a single family dwelling or a multi-family project serving no more than four families, i.e. units;

(2) The approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring FmHA's approval;

*(3) Rehabilitation, replacement, or renovation of any existing housing units, with no expansion in the number of units;

(4) Self-Help Technical Assistance Grants;

*(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions;

(6) Technical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within the Coastal Barrier Resources System or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in § 1940.317(g) of this subpart;

(8) The financing of housing construction or the approval of lots in a previously approved FmHA subdivision provided that

(i) The action is consistent with all previously adopted stipulations for the multi-family housing project or subdivision, and

(ii) The FmHA environmental impact review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested;

(9) The purchase of any existing, non-FmHA owned housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within a 100-year floodplain, the Coastal Barrier Resources System, or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in § 1940.317(g) of this subpart; and

(10) Appraisals of nonfarm tracts and small farms for rural housing loans.

(c) *Community and business programs and nonprofit national corporations loan and grant program.* *(1) Financial assistance directed to existing businesses, facilities, and/or structures that does not involve new construction or large increases in employment; does not involve a facility that presently or previously produced or stored hazardous waste or disposed of hazardous waste on the facility's property; and does not result in the increased production of gaseous, liquid, or solid wastes, or a change in the type or content of such wastes as long as waste production, handling, treatment and disposal practices presently comply with applicable Federal, State and local regulations and there is no history of violations. If any of these waste production, handling, treatment, disposal or compliance criteria cannot be met, a Class I assessment must be initiated to include a narrative discussion of the types and quantities of wastes produced and the adequacy of the treatment, storage, and disposal practices, if the involved wastes meet the criteria for a Class I assessment contained in § 1940.311(b)(3)(iii) of this subpart. If not, a Class II assessment must be completed.

*(2) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(3) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(4) Financial assistance for a technical assistance grant under the nonprofit national corporation loan and grant program;

(5) Projects that solely involve the purchase and installation of office equipment, public safety equipment, or motor vehicles; and

(6) Amendments to approved projects meeting the criteria of paragraph (e)(2) of this section.

(d) *Farm programs.* (1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (d) (10) and (11) of this section;

(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d) (10) and (11) of this section;

(3) Financial assistance for:

(i) The payment of annual operating expenses, which does not cover activities specifically addressed in this section or §§ 1940.311 or 1940.312 of this subpart;

(ii) Family living expenses, and

(iii) Refinancing debts;

*(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

(5) Financial assistance for onsite water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

(6) Financial assistance for the installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart.

(7) Financial assistance that solely involves the replacement or restoration of irrigation facilities, to include those facilities described in paragraph (d)(6) of this section, with minimal change in use, size, capacity, or location from the original facility(s) provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a Class I assessment be completed as specified in § 1940.317(g) of this subpart. Also, to qualify for this exclusion, the facilities to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons. Otherwise, the action will be viewed as an installation of irrigation facilities.

(8) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a State water quality

standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart;

*(9) Financial assistance for the conversion of:

(i) Land in agricultural production to pastures or forests, or

(ii) Pastures to forests;

*(10) Financial assistance for land-clearing operations of no more than 15 acres, provided no wetlands are affected, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

(11) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no State water quality standard or wetlands are affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. If a water quality standard would be impaired or antidegradation requirement not met, a Class I assessment is required as specified in § 1940.317(g) of this subpart.

(e) *General exclusions.* (1) The award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses;

(2) For actions other than those covered by Exhibit M of this subpart, loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to approved projects, including the provision of additional financial assistance that do not alter the purpose, operation, location, or design of the project as originally approved;

(3) The issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs;

(4) Procurement activities for goods and services, routine facility operations, personnel actions, and other such management activities related to the operation of the Agency;

(5) Reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances; and

*(6) The lease or disposal of real property by FmHA whenever the transaction is either not controversial for environmental reasons or will not result in a change in use of the real property within the reasonably foreseeable future.

§ 1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in § 1940.310 of this subpart as categorical exclusions require the preparation of an environmental assessment in order to determine if the proposal will have a significant impact on the environment. For purposes of implementing NEPA, the actions listed in this section are presumed to be major Federal actions. If an action has a potential to create a significant environmental impact, an EIS must be prepared. (In situations when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA involve small-scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small-scale action, though, need only be sufficient to determine whether the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA has classified its smaller scale approval actions as Class I actions. The format which will be used for accomplishing the environmental assessment of a Class I action is provided in Form FmHA 1940-21. An important aspect of this classification method is that it allows FmHA's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Additional guidance on the application of NEPA to Class I actions is provided in § 1940.319 of this subpart.

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion. In the case of an expansion for which an environmental assessment was not done for the original FmHA project, the size of the proposal for assessment purposes is determined by adding the number of units in the original project(s) to those presently being requested.

(1) Financial assistance for a multifamily housing project, including labor housing which comprises at least 5 units, but no more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots; and

(3) Financial assistance for a housing preservation grant.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* Class I assessments will be prepared for the following categories:

(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet all of the following criteria:

(i) There will not be a substantial increase in the volume of discharge or the loading of pollutants from any existing or expanded sewage treatment facilities, or a substantial increase in an existing withdrawal from surface or ground waters. A substantial increase may be evidenced by an increase in hydraulic capacity or the need to obtain a new or amended discharge or withdrawal permit.

(ii) There will not be either a new discharge to surface or ground waters or a new withdrawal from surface or ground waters such that the design capacity of the discharge or withdrawal facility exceeds 50,000 gallons per day and provided that the potential water quality impacts are documented in a manner required for a Class II assessment and attached as an exhibit to the Class I assessment.

(iii) From the boundaries listed below, there is no extension, enlargement or construction of interceptors, collection, transmission or distribution lines beyond a one-mile limit estimated from the closest point of the boundary most applicable to the proposed service area:

(A) The boundary formed by the corporate limits of the community being served.

(B) If there are developed areas immediately contiguous to the corporate limits of a community, the boundary formed by the limits of these developed areas.

(C) If an unincorporated area is to be served, the boundary formed by the limits of the developed areas.

(iv) The proposal is designed for predominantly residential use with other new or expanded users being small-scale commercial enterprises having limited secondary impacts.

(v) For a proposed expansion of sewage treatment or water supply facilities, such expansions would serve a population that is no more than 20 percent greater than the existing population.

(vi) The proposal is not controversial for environmental reasons, nor have relevant questions been raised regarding its environmental impact which cannot be addressed in a Class I assessment.

(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater; and

(3) Financial assistance for the construction or expansion of facilities, such as fire stations, real stores, libraries outpatient medical facilities, serv-

ice industries, additions to manufacturing plants, office buildings, and wholesale industries, that:

(i) Are confined to single, small sites; and

(ii) Are not a source of substantial traffic generation; and

(iii) Do not produce either substantial amounts of liquid or solid wastes or any of the following type(s) of wastes:

(A) Gaseous, liquid, or solid waste that is hazardous toxic, radioactive, or odorous;

(B) Either a liquid waste, whether or not disposed of on-site, that cannot be accepted by a publicly owned treatment works without first receiving petreatment, or a liquid waste discharge that is a point source subject to a Federal, or State discharge permit; or

(C) Gaseous waste or air pollutant that will be emitted either from a new source at a rate greater than one hundred tons per year or from an expanded source at a rate greater than twenty-five tons per year.

(4) Financial assistance for a livestock-holding facility or feed-lot meeting the criteria of § 1940.311(c)(8) of this subpart.

(c) *Farm Programs.* In completing environmental assessments for the following Class I actions and the Class II actions listed in § 1940.312(d), special attention will be given to avoiding a duplication of effort with other Department agencies, particularly SCS. For applications in which the applicant is receiving assistance from other agencies, technical assistance from SCS, for example, FmHA will request from that agency a copy of any applicable environmental review conducted by it and will adopt that review if the requirements of § 1940.324 of this subpart are met. FmHA will work closely with the other Federal Agencies to supplement previous or ongoing reviews whenever they cannot be readily adopted.

(1) Financial assistance for the installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres and provided that no wetlands are affected, in which case the application will fall under Class II as defined in § 1940.312 of this subpart:

(2) Financial assistance for the development of farm ponds or lakes of more than 5 acres in size, but no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart;

(3) Financial assistance for land-clearing operations encompassing over 15 acres, but no more than 35 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart;

(4) Financial assistance for the construction of energy producing facilities designed for on-farm needs such as methane digestors and fuel alcohol production facilities;

(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application will fall under Class II as defined in § 1940.312 of this subpart;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart; and

(8) Financial assistance for a livestock-holding facility or feedlot having a capacity of at least one-half of those listed in § 1940.312(c)(9) of this subpart. (If the facility is located near a populated area or could potentially violate a State water quality standard, it will be treated as a Class II action as required by § 1940.312(c)(10) of this subpart.)

(d) *General.* (1) Any Federal action which is defined in § 1940.310 of this subpart as a categorical exclusion, but which is controversial for environmental reasons, or which is the subject of an environmental complaint raised by a government agency, interested group, or citizen;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location or design of the project as originally approved;

(3) The lease or disposal of real property by FmHA which meets either the following criteria:

(i) The lease or disposal may result in a change in use of the real property in the reasonably foreseeable future, and such change is equivalent in magnitude or type to either the Class I actions defined in this section or the categorical exclusions defined in § 1940.310 of this subpart; or

(ii) The lease or disposal is controversial for environmental reasons, and the real property is equivalent in size or type to either the Class I actions defined in this section or the categorical exclusions defined in § 1940.310 of this subpart.

§ 1940.312 Environmental assessments for Class II actions.

Class II actions are basically those which exceed the thresholds established for Class I actions and, consequently, have the potential for resulting in more varied and substantial environmental impacts. A more detailed environmental assessment is, therefore, required for Class II actions in order to determine if the action requires an EIS. The format that will be used for completing this assessment is included as Exhibit H of this subpart. Further guidance on Class II actions is contained in § 1940.318 of this subpart. Class II actions are presumed to be major Federal actions and are defined as follows:

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

(1) Financial assistance for a multifamily housing project, including labor housing, which comprises more than 25 units; and

(2) Financial assistance for, or the approval of, a subdivision as well as the expansion of an existing one, which involves more than 25 lots.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* (1) Class II actions are those which either do not meet the criteria for a categorical exclusion as stated in § 1940.311 of this subpart, or involve a livestock-holding facility or feedlot meeting the criteria for a Class II action as defined in paragraphs (c) (9) and (10) of this section; and

(2) Non-technical assistance grant or loan guarantee under nonprofit national corporation loan and grant program.

(c) *Farm programs.* In completing environmental assessments for the following actions, FmHA will first determine if the applicant has sought technical assistance from the Soil Conservation Service (SCS). If not, the applicant will be requested to do so. Subsequently, an approved loan will be structured so as to be consistent with any conservation plan developed with the application by SCS. However, the FmHA approving official need not include an element of the conservation plan within the loan agreement if that official determines that the element is both nonessential to the accomplishment of the plan's objectives and so costly as to prevent the borrower from being able to repay the loan. The SCS environmental review will be adopted by FmHA if the requirements of § 1940.324 of this subpart are met.

(1) Financial assistance for the installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers either designed to irrigate more than 160 acres or that would serve any amount of acreage and affects a wetland;

(2) Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would affect a wetland;

(3) Financial assistance for land-clearing operations either encompassing more than 35 acres or affecting a

wetland, if less than 35 acres is involved;

(4) Financial assistance for the construction or enlargement of aquaculture facilities;

(5) Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;

(6) Financial assistance to an individual farmer or an association of farmers for water control facilities such as dikes, detention reservoirs, stream channels, and ditches;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises either utilizing more than 10 acres or affecting a wetland, if less than 10 acres is involved.

(8) Financial assistance for alteration of a wetland;

(9) Financial assistance for a livestock-holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities: 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,00 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine, and sheep; (The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0) and

(10) Financial assistance for a livestock-holding facility or feedlot which either could potentially violate a State water quality standard or is located near a town or collection of rural homes which could be impacted by the facility, particularly with respect to noise, odor, visual, or transportation impacts and having a capacity of at least one-half of those listed in paragraph (c)(9) of this section.

(d) *General.* (1) Any action which meets the numerical criteria or other restriction for a Class I action contained in § 1940.311 of this subpart, but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such a complaint or questions can be handled under the assessment format for a Class I action, Form FmHA 1940-21, as explained in § 1940.319 of this subpart. When several potential impacts are questioned, however, the assessment format (Exhibit H of this subpart) for a Class II action must be used to address these questions;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location, or design of the project as originally approved;

(3) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under section 601 Energy Impacted Area Development Assistance Program, as well as the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas;

(4) Proposals for legislation as defined in CEQ's regulations, § 1508.17;

(5) The issuance of regulations and instructions, as well as amendments to these, that described either the entities, proposals and activities eligible for FmHA financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented; and

(6) The lease or disposal of any real property by FmHA which either does not meet the criteria for a categorical exclusion as stated in § 1940.310(e)(6) of this subpart or a Class I action as stated in § 1940.311(d)(3) of this subpart.

§ 1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs will be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in § 1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA actions that on an individual basis may have relatively few environmental impacts but create a potential for significantly impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multi-family housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s), (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA will consult with HUD for determining a significant impact whenever the total of HUD and FmHA housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 24 CFR Part 50.)

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man, and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.) or similar State authorities.

(2) The preservation of natural systems is identifiably affected, that is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store highly volatile, toxic, or water-reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events (i.e., hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA office to which a potential applicant would go to seek program information and request application materials will notify the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA for a project not categorically excluded, the prospective applicant will be requested to complete Form FmHA 1940-20 at the time of the issuance of Form AD-622, "Notice of Preapplication Review Action," or other notice inviting an application. Form AD-622 will clearly inform the applicant that during the period of application review, the applicant is to take no actions or incur any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, and that satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions for Community Programs and prior to loan approval for all other programs where a preapplication is used. FmHA must make its environmental reviews simultaneously with other loan processing actions so that they are an integral part of the loan process. Whenever the potential for a major adverse environmental impact is recognized, such as issues pertaining to floodplains, wetlands, endangered species, or the need for an EIS, priority consideration will be given to resolving this issue by appropriate FmHA staff. Loan processing need not cease during this resolution period, but loan processing actions will not be taken that might limit alternatives to be considered or whose outcome may be affected by the environmental review. The environmental impact review (whether a categorical exclusion, environmental assessment or EIS) must be completed prior to the issuance of the letter of conditions for Community Programs, prior to issuance of a conditional commitment for the Business and Industry and Farmer Program Guaranteed Loan Programs, and either prior to loan approval or obligation of funds, whichever occurs first, for all other programs where a preapplication is used. As an exception, however, whenever an application must be submitted to the National Office for concurrence or approval, the environmental review must be completed prior to and included in the submission to the National Office. The environmental impact review is not completed by FmHA until all applicable public notices and associated review periods have been completed and FmHA has taken any necessary action(s) to address comments received. The exception to the provisions of this paragraph is contained in § 1940.332 of this subpart.

(c) When a preapplication is not filed, the prospective applicant will be required to complete Form FmHA 1940-20 at the earliest possible time after FmHA is contacted for assistance but no later than when the application is filed with the appropriate FmHA office. (For the exception to this statement as regards Farm Programs' Class I actions, see § 1940.309(c) of this subpart.) FmHA will not consider the application to be complete, until FmHA staff have completed the environmental impact review, whether an assessment or EIS.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA 1940-22 will be completed by FmHA as early as possible after receipt of the application. The application will not be considered complete until either the checklist is successfully completed or the need for any further environmental review is identified and completed.

§ 1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* With the exception of paragraph (b)(2) of this section, the FmHA official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action will be the official having approval authority for the action as specified in Subpart A of Part 1901 of this chapter (available in any FmHA office).

(b) *State Office level.* (1) When the approval official is at the State Office level, the responsible Program Chief will have the responsibility for preparing the appropriate environmental review document. Whenever the Chief delegates this responsibility in accordance with § 1940.302(i) of this subpart, the Chief is responsible for reviewing the environmental document to ensure that it is adequate, that any deficiencies are corrected, and that it is signed by the preparer. When the document is satisfactory to the Chief, the Chief will sign it as the concurring official. When no delegation occurs, the Chief will sign as the preparer. If the environmental review document is either a Class I or Class II assessment, it must be provided to the SEC for review prior to being submitted to the approval official for final determinations. The SEC will review the assessment and provide recommendations to the approval official.

(2) Whenever the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, will make the final decision on the matter or matters in disagreement. The State Director will also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter will be forwarded to the National Office for resolution. The Program Support Staff will coordinate its resolution with the appropriate Assistant Administrator. Failure of these parties to resolve the matter will require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* The approval official for the action under review will be responsible for preparing the appropriate environmental review document and completing the environmental findings and impact determinations for Class I and Class II assessments, except in the circumstances outlined in paragraph (d) of this section. Whenever the approval official delegates the preparation of the environmental review in accordance with § 1940.302(i) of this subpart, the approval official must, after exercising the same responsibilities assigned to the Program Chief as indicated in paragraph (b)(1) of this section, sign the environmental review document as the concurring official. Both District Directors and County Supervisors will contact, as needed, the SEC for technical assistance in preparing specific environmental review documents.

(d) *Multi-level review.* When the approval official is at the County Office or District Office level but the action must be forwarded to the State Office for concurrence, the responsible Program Chief will perform the responsibilities of the concurring official with respect to the environmental review document and the SEC will review it, if a Class I or Class II assessment, in a similar manner as indicated in paragraph (b) of this section. Responsibilities similar to those of the Program Chief will exist for the District Director when the County Supervisor forwards an action to the District Office for concurrence.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance. State Directors have a similar right with respect to District and County Offices.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application to lose its categorical exclusion and require a Class I environmental assessment, as further specified in paragraph (e) of this section. Section 1508.4 of CEQ's regulations state that "any procedures under this section will provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see § 1940.310(b)(5) of this subpart) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filling of 2 acres of wetland, such a potential wetland impact, under the requirements of § 1940.310(a) of this subpart, represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See § 1940.314 of this subpart.)

(b) The approving official for an action will be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA 1940-22 will be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. When Form FmHA 1940-22 must be prepared and the approving official delegates its preparation in accordance with § 1940.302(i) of this subpart, the approving official must sign the form as the concurring official. If that approving official must, prior to approval, forward the action to a District or State Office for review, a second concurrence must be executed by the Program Chief or District Director, as determined by the level of review being conducted. The checklist is filed with the application and serves as FmHA's documentation of compliance with the environmental laws, regulations and Executive Orders listed on the checklist. Whenever the preparer is within the State Office or is in the National Office, the FmHA office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA 1940-22 need not be completed for all categorical exclusions as defined in § 1940.310 of this subpart but only for those listed below. This list identifies the exclusions by their subject heading and paragraph number within § 1940.310 of this subpart. Additionally, for the housing assistance exclusion identified in § 1940.310(b)(8), for farm programs exclusions listed in § 1940.310(d)(2) and (3), and for community and business programs exclusions processed under § 1940.310(e)(2) of this subpart, a notation must be made in the docket materials or running record for the action by the processing official that the specific criteria of the applicable exclusion have been met for the action under review.

(1) Housing assistance—(b), (1), (2), (3), (5), (7), and (9);

(2) Community and Business Programs—(c) (1) and (2);

(3) Farm Programs—(d) (1) through (11);

(4) General exclusions—(e)(2), if action covered by Exhibit M of the subpart, and (6).

(d) In applying the definition of a categorical exclusion to a project activity, the preparer must consider the following two elements in addition to the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal, the application will undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a four-lot subdivision is requested and the application evidences or the reviewer knows that additional phases are planned and will culminate in a 16-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing 16 lots. Should the ap-

plicant subsequently apply for approval of any of these additional phases, no further environmental assessment will be required as long as the original assessment still accurately reflects the environmental conditions found at the project site and the surrounding areas.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA. If an environmental assessment is required, it will address the environmental impacts of the entire project.

(e) Under any one of the following circumstances, an action that is normally categorically excluded loses its classification as an exclusion and must be reviewed in the manner described in paragraph (g) of this section. The following listing corresponds to the list of land uses and environmental resources contained in part 2 of Form FmHA 1940-22.

(1) Wetlands—the proposed action:

(i) Would be located adjacent to a wetland or a wetland is within the project site, and

(ii) The action would affect the values and functions of the wetland by such means as converting, filling, draining, or directly discharging into it;

(2) Floodplains—the proposed action:

(i) Includes or involves an existing structure(s) located within a 100-year floodplain (500-year floodplain if critical action), or

(ii) Would be located within a 100-year floodplain (500-year floodplain if critical action) and would affect the values and functions of the floodplain by such means as converting, dredging, or filling or clearing the natural vegetation;

(3) Wilderness (designated or proposed)—the proposed action:

(i) Would be located in a wilderness area, or

(ii) Would affect a wilderness area such as by being visible from the wilderness area;

(4) Wild or Scenic River (proposed or designated or identified in the Department of the Interior's nationwide Inventory)—the proposed action:

(i) Would be located within one-quarter mile of the banks of the river,

(ii) Involves withdrawing water from the river or discharging water to the river via a point source, or

(iii) Would be visible from the river;

(5) Historical and Archeological Sites (listed on the National Register of Historic Places or which may be eligible for listing)—the proposed action:

(i) Contains a historical or archeological site within the construction site, or

(ii) Would affect a historical or archeological site;

(6) Critical Habitat or Endangered/Threatened Species (listed or proposed)—the proposed action:

(i) Contain a critical habitat within the project site,

(ii) Is adjacent to a critical habitat, or

(iii) Would affect a critical habitat or endangered/threatened species;

(7) Coastal Barrier Included in Coastal Barrier Resources System—the proposed action would be located within the Coastal Barrier Resources System;

(8) Natural Landmark (listed on National Registry of Natural Landmarks)—the proposed action either:

(i) Contains a natural landmark within the project site, or

(ii) Would affect a natural landmark;

(9) Important Farmlands—the proposed action would convert important farmland to a nonagricultural use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(10) Prime Forest Lands—the proposed action would convert prime forest land to another use(s), except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(11) Prime Rangelands—the proposed action would convert prime rangeland to another use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(12) Approved Coastal Zone Management Area—the proposed action would be located within such area and no agreement exists with the responsible State agency obviating the need for a consistency determination for the type of action under consideration;

(13) Sole Source Aquifer Recharge Area—the proposed action would be located within such area and no agreement exists with the Environmental Protection Agency (EPA) obviating the need for EPA's review of the type of action under consideration; and

(14) State Water Quality Standard—the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

(f) From the above paragraph (e), it should be noted that the location within the project site of any of the land uses and environmental resources identified in paragraphs (e) (1), (2), (9), (10), (11), (12), and (13) of this section is not sufficient for an action to lose its categorical exclusion. Rather, the land use or resource must be affected in the case of paragraphs (e) (1), (2), (9), (10), and (11) of this section. For paragraphs (e) (12), (13) and (14) of this section, further review and consultation can be avoided by written agreement with the responsible agency detailing the types of actions not requiring interagency review.

(g) Whenever a categorical exclusion loses its status as an exclusion for any of the reasons stated in paragraph (e) of this section, the environmental impacts of the action must be reviewed through the preparation of a Class I assessment, Form FmHA 1940-21. Not all of the procedural requirements for a Class I assessment apply in this limited case, however. The following exemptions exists:

(1) No public notice provisions of this subpart apply.

(2) The applicant does not complete Form FmHA 1940-20.

(3) The action does not require a Class II assessment should more than one important land resources be affected.

§1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the preparer (as defined in §§ 1940.302(i) and 1940.316 of this subpart) is to examine Form FmHA 1940-20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it will be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment will be initiated in the format and manner described in Exhibit H of this subpart. In completing the assessment, appropriate experts from State and Federal agencies, universities, local and private groups will be contacted as necessary for their views. In so doing, the preparer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. Appropriate experts must be contacted whenever required by a specific provision of this subpart or whenever the preparer does not have sufficient data or expertise available within FmHA to adequately assess the degree of a potential impact or the need for avoidance or mitigation. Comments from an expert must be obtained in writing whenever required by a specific provision of this subpart or the potential environmental impact is either controversial, complex, major, or apparently major. When correspondence is exchanged, it will be appended to the assessment. Oral discussions should be documented in the manner indicated in Exhibit H of this subpart. On the other hand, there is no need for the preparer to seek expert views outside of the Agency when there is no specific requirement to do so and the preparer has sufficient expertise available within FmHA to assess the degree of the potential impact and the need for avoidance or mitigation.

(c) At the earliest possible stage in the assessment process, the preparer will identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the preparer will consult with the involved agencies to determine the nature, timing and results of their environmental analysis. These consultations will be documented in the assessment and considered or adopted when making the environmental impact determination. (See § 1940.324 of this subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the preparer will further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§ 1940.320(b) and 1940.326 of this subpart.

(d) Consultations similar to those discussed in paragraph (c) of this section will also be undertaken with those Federal and State agencies which are directly involved in the FmHA action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the preparer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement will be prepared. If the other Agency does not believe a significant impact will occur, the preparer will consider this finding and its supporting analysis in completing the FmHA environmental impact determination. Guidance in adopting an environmental assessment prepared by another Federal Agency is provided in § 1940.324 of this subpart.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the preparer to assess, consideration should be given to holding a public meeting in the manner described in § 1940.331(c) of this subpart. Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the follow-up from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in § 1940.331(c). However, a transcript of the meeting need not be prepared, but the preparer will make detailed notes for incorporation in the assessment. (See § 1940.331(c) of this subpart.)

(f) Throughout this assessment process, the preparer will keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the preparer will so notify the approving official. Those actions specified in § 1940.320 of this subpart will then be initiated, unless the approving official disagrees with the preparer's recommended determination, in which case further review of the determination may be required as explained in § 1940.316 (b), (d) and (e) of this subpart. As soon as possible after the need for an EIS is determined, the applicant will also be advised of this in writing, as well as reinformed of the limitations on its actions during the period that the EIS is being completed. (See § 1940.309(e) of this subpart.) The applicant's failure to comply with these limitations will be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration will be given to incorporating mechanisms into the proposed action for reducing, mitigating, or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include the deletion, relocation, redesign or other modifications of the project elements; the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts; soil erosion and sedimentation plans to control runoff during land-disturbing activities; the establishment of vegetative buffer zones between project sites and adjacent land uses; protective measures recommended by environmental and conservation agencies, including but not limited to interstate, international, Federal, State, area-wide, and local agencies having jurisdiction or special expertise regarding the action's impacts; and zoning. Mitigation measures must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XIX of Exhibit H of this subpart), and include an analysis of their environmental impacts and potential effectiveness and placed in the offer of financial assistance as special conditions or in the implementation requirements when the action does not involve financial assistance. These measures will be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the preparer will initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 10b of Form FmHA 1940-21 for a Class I action and Item XXIb of Exhibit H of this subpart for a Class II action will result in postponement of further consideration of the application until such problem is alleviated.

(i) When the preparer has completed the assessment, the related materials and correspondence utilized will be attached. The preparer will then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or will recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 10a of Form FmHA 1940-21 for Class I action and item XXIa of Exhibit H of this subpart for a Class II action.) The recommended environmental findings will also be completed. (Item 10b of Form FmHA 1940-21 for a Class I action and Item XXIb of Exhibit H of this subpart for a Class II action.) In those instances specified in § 1940.316, the assessment will then be forwarded to the concurring official and, as required, to the SEC for review. The concurring official will coordinate, as necessary, with the preparer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official or the SEC. The SEC will coordinate with the concurring official in a similar fashion whenever the latter's review is required.

(j) The approving official will review the environmental file and recommendations. The official will then execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requirements, the format contained in Exhibit I of this subpart will be used. If a significant impact is determined, the steps specified in § 1940.320 of this subpart will be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this subpart and listed in Item 10b of Form FmHA 1940-21 for a Class I action or Item XXIb of Exhibit H of this subpart for a Class II action and there are no feasible alternatives (practicable alternatives when required by specific provisions of this subpart), modifications, or mitigation measures which could comply, the action will be denied or disapproved. If the approving official's determination or findings differ from the recommendations of the preparer, concurring official or the SEC, this difference will be addressed in the manner specified in § 1940.316 of this subpart.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. To conclude the assessment, the applicant will then be requested to provide public notification of these results as indicated in §1940.331(b)(3) of this subpart. The approving official will not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they will be included in the environmental assessment and considered. Any necessary changes resulting from this consideration will be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determination steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents, i.e., the assessment, related correspondence, Form FmHA 1940-20, and the finding of no significant impact will be included with the approval documents which are assembled for review and clearance within the approving office.

(l) Whenever changes are made to an action or comments or new or changed information relating to the action's potential environmental effects is received after the assessment is completed but prior to the action's approval, such change, comment, or information will be evaluated by the approving official to determine the impact on the completed assessment. Whenever the contents or findings of that assessment are affected, the assessment process for that action will be revised and any other related requirement of this subpart met. Changes to an action in terms of its location(s), design, purpose, or operation will normally require, at a minimum, modification of the original assessment to reflect such change(s) and the associated environmental impacts.

(m) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action, with respect to the issue raised and the action's stage of implementation. The National Office may be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure will be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in §§1940.310 through 1940.313 of this subpart.

§1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this subpart, a main purpose of Form FmHA 1940-21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as well as compliance determinations for other applicable environmental laws, regulations and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Form FmHA 1940-21 is exactly the same as for a Class II action. The preparer (as defined in §§1940.302(i) and 1940.316 of this subpart) must become familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other Federal actions or related nonfederal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of

Form FmHA 1940-20, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI, whenver a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant will be required to submit the remaining items of the data request. Additionally, the circumstances under which FmHA does not require the submission of Form FmHA 1940-20 by an applicant whose proposed action requires a Class I assessment are specified in §1940.317(f) of this subpart.

(d) The preparer must ensure that the data received from the applicant is complete, consistent, signed and dated before initiating the assessment. If it is not, the applicant will be required to make the necessary changes and clarifications. The reviewer must also ensure that the application properly meets the definition of a Class I action. Phased or segmented projects, as discussed in §1940.317(d) of this subpart, will be identified and the elements and the size of the entire project used to classify the action.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA 1940-21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the preparer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved will be attached. However, if more than one listed resource is to be affected, this will be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action will be initiated except if the action under review is an application for a Housing Preservation Grant.

(f) Similarly in completing item 3, General Impacts of Form FmHA 1940-21, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action. See § 1940.311(b)(1) of this subpart for when an attached discussion of water quality impacts is mandatory.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, will be incorported into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature will warrant the initiation of a more detailed assessment under the format for a Class II action (Exhibit H of this subpart). Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the environmental assessment format for a Class II action (Exhibit H of this subpart) will be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis will then be provided by the approving official to the party or parties which raised the matter with FmHA. When several potential impacts are questioned, however, the more detailed assessment format will be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA actions recently approved in the area or planned, will be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and threshholds discussed in paragraphs (e), (f) and (g) of this section, the environmental assessment format for a Class II action will be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency will be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the preparer as the FmHA assessment, assuming the impacts are not significant. (See § 1940.324 of this subpart.) If the other Agency is doing or planning an EIS, the preparer will inform that Agency of our action and request to be a cooperating agency.

(i) The preparer will have the responsibility of initiating the assessment format for a Class II action (Exhibit H of this subpart) whenever the need is identified. This should be done as early as possible in the review process. The preparer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The preparer will simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Exhibit I will be completed by the approval official in the same instances for a Class I assessment as for a Class II assessment. However, public notification of FmHA's finding of no significant environmental impact will not be required for a Class I assessment. Also, special provisions for completing a Class I assessment for an action that is normally categorically excluded but loses its classification as an exclusion are contained in § 1940.317(g) of this subpart. With the exception of the two preceding sentences, all other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, apply to a Class I assessment.

§ 1940.320 Preparing EISs.

(a) *Responsibility.* Whenever the District Director or County Supervisor determines there is a need to prepare an EIS, the State Director will be notified. The EIS will be prepared at the State Office and the State Director will assume the responsibility for preparing it. The State will in turn notify the Administrator of these EISs, as well as those needed EISs identified by a State Office review. EISs will be prepared according to this section. The State Director will be responsible for actions initiated within the State. However, in so doing, the State Director will consult with the National Office to determine that the document meets the requirements of NEPA. State Directors will be responsible for issuing such EISs. However, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director will not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the preparer of the EIS will take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead agency than FmHA (using the criteria contained in section 1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead agency. If difficulties arise in completing this determination, the National Office will be consulted for assistance. All of the parties identified below will be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

(1) All Federal and State agencies that are being requested to provide financial assistance for the project or related projects;

(2) All Federal agencies that must provide a permit for the project should it be approved;

(3) All Federal agencies that have a specific environmental expertise in major environmental issues identified to date;

(4) The Agency responsible for the implementation of the State's environmental impact analysis requirement, if one has been enacted or promulgated by the State;

(5) All Federal, State, and local agencies that will be requested to comment on the draft EIS;

(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping process.* As soon as possible after a decision has been made to prepare an EIS, the following process will be initiated by the preparer for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process will be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the preparer, indicating that this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it will be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It will be the responsibility of the preparer of the EIS to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the FEDERAL REGISTER. For requirements relating to the timing the publication of the notice of intent within the project area, as well as the applicant's responsibilities for the notice, see § 1940.331(b) of this subpart.

(2) A scoping meeting will be held. To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting will be chaired by the preparer of the EIS and will be organized to accomplish the following major purposes (as well as other purposes listed in § 1501.7 of the CEQ regulations).

(i) Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(iii) Identify and eliminate, from detailed study, the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead Agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decisionmaking schedule;

(3) Minutes of the scoping meeting, including the major points discussed and decisions made, will be prepared and retained by the preparer of the EIS as part of the environmental file. The preparer will offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Interdisciplinary approach.* The EIS will be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, State and Federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in § 1940.336 of this subpart.

(e) *Content and format of EIS.* The EIS will be prepared in the format and manner described in Part 1502 of the CEQ regulations. There is a great deal of specific guidance in that Part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA will circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the preparer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS will be provided to all parties that commented on the draft EIS.

(g) *Filing of the EIS.* The Deputy Administrator for Program Operations or any State Director that has been delegated the authority to prepare an EIS must file the EIS with EPA in accordance with § 1506.9 of the CEQ regulations. The official filing date for an EIS is the day that it is received by EPA's Office of Federal Activities. Filing of the EIS cannot occur until copies of the EIS have been transmitted to commenting agencies and made available to the public. Transmittal of the EIS must, therefore, occur either prior to its being filed with EPA (received by EPA) or no later than close of business of the same day that it is filed.

(h) *Public information meetings.* A public information meeting, as specified in § 1940.331(c)(1) of this subpart, will be held near the project site to discuss and receive comments on the draft EIS.

(i) *Response to comments.* The preparer of the EIS will respond to comments on the draft EIS as required by § 1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting will also be identified and addressed.

(j) *Timing of review.* The preparer of the EIS will be responsible for ensuring that the timing requirements for FmHA actions and the review periods for draft and final EISs are fully met (§ 1506.10 of CEQ regulations). Prescribed review periods are calculated from the date that EPA's Office of Federal activities publishes in the FEDERAL REGISTER a notice of availability for the EIS. Any request to reduce a prescribed review period will be made to EPA in accordance with § 1506.10(d) of the CEQ regulations.

§ 1940.321 Use of completed EIS.

(a) The final EIS will be a major factor in the Agency's final decision. Agency staff making recommendations on the action and the approving official will be familiar with the contents of the EIS and its conclusions and will consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft will accompany the proposal through the FmHA final clearance process. The alternatives considered by the approving official will be those addressed in the final EIS.

(b) As part of this review process, the preparer of the EIS will complete the recommendations listed in Item XXIb and c of Exhibit H of this subpart and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA and before any action is taken on the decision reached on the proposal, the approving official will prepare, in consultation with the preparer of the EIS, a concise record of the decision which will be available for public review. The record will:

(a) State the decision reached;

(b) Certify that the timing requirements for the EIS process have been fully met;

(c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statuatory mission and, if applicable, national policy) that were considered in the decision;

(d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and

(e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS's.

(a) Either the State Office or the National Office, as appropriate, will prepare supplements to either draft or final EIS's if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environmental concerns and bear on the proposed action or its impacts.

(b) If the preparer of the draft or final EIS determines that the changes or new circumstances referenced in paragraph (a) of this section do not require the preparation of a supplemental EIS, the preparer will complete an environmental assessment for a Class II action which will document the reasons for this determination.

(c) The preparer will be responsible for advising the approving official of the need for a supplement. The latter will make the Agency's formal determination in a manner consistent with § 1940.316 of this subpart.

(d) All of the requirements of this subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained by the Administrator for any alternative procedures. The final supplement will be included in the project file or docket and used in the Agency's decisionmaking process in the same manner as a final EIS. (See § 1940.321 of this subpart and in particular subparagraphs (f), (g), and (j) of that section as well as § 1502.9(c)(4) of the CEQ regulations for associated circulation, filing, and timing requirements.)

§ 1940.324 Adoption of EIS or environmental assessment prepared by other Federal Agency.

(a) FmHA may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the preparer of the FmHA environmental review and it is concluded that the document meets the requirements of this subpart; and

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA and the environmental conditions in the project area have not substantially changed since its publication, FmHA will recirculate the EIS as a "final" and so notify the public as specified in § 1940.331(b) of this subpart. The final EIS will contain an appropriate explanation of the FmHA involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS will be updated to cover these differences and recirculated as a draft EIS with the public so notified. From that point, it will be reviewed and processed in the same manner as any other FmHA EIS. For circulation, filing, and timing requirements, see

paragraphs (f), (g), and (j) of § 1940.320 of this subpart as well as §§ 1506.3(c), 1506.9, and 1506.10 of the CEQ regulations.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under Part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS will be reviewed and processed in the same manner as any other FmHA EIS.

(d) FmHA may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies. If the requirements of that paragraph can be met except for the fact that the Federal agency whose assessment is to be adopted has no preliminary public notice requirements similar to FmHA's (See § 1940.331(b)(4) of this subpart), the assessment can be adopted without FmHA publishing a preliminary public notice. Additionally, when all of another Federal agency's assessment is adopted, without supplementation, for a Class II action and a finding of no significant environmental impact (Exhibit I of this subpart) is reached by the proper FmHA official, no public notification of FmHA's finding of no significant environmental impact is required if:

(1) The other Federal agency or its designee published a similar finding in a newspaper of general circulation in the vicinity of the proposed action;

(2) The other Federal agency's or its designee's public notice clearly described the action subject to the FmHA environmental review; and

(3) The other Federal agency's or its designee's public notice was published less than eighteen months from the date FmHA adopted the assessment.

§ 1940.325 FmHA as a cooperating Agency.

(a) FmHA will serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA is directly involved or for an action which is directly related to a proposed FmHA action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA. A memorandum of understanding or other written correspondence will be developed with the lead agency in order to define FmHA's role as the cooperating agency. The State Director will coordinate FmHA's participation as a cooperating Agency for an action at the State Office level. The Administrator will have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the State Director will consider the expertise which FmHA could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency will be sent to CEQ.

(c) As a cooperating Agency, FmHA will participate in the development and implementation of the scoping process. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

(d) The State Director will request the lead Agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA will use the EIS as its own as long as FmHA's comments and concerns are adequately addressed by the lead Agency and the final EIS is considered to meet the requirements of this subpart. It will be the responsibility of the preparer of the FmHA environmental review document to formally advise the approving official on these two points. The failure of the lead Agency's EIS to meet either of these stipulations will require FmHA to follow the steps outlined in § 1940.324 of this subpart prior to the approving official's decision on the FmHA action.

§ 1940.326 FmHA as a lead Agency.

(a) When other Federal agencies are involved in an FmHA action or related actions that require the preparation of an EIS, the preparer will consult with these agencies to determine a lead Agency for preparing the EIS. The criteria for making this determination will be those contained in § 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office will be contacted. The assistance of CEQ will then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA preparer will request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b) of this subpart. A memorandum of understanding or other written correspondence should be developed with a cooperating agency in order to define that agency's role in the preparation of the EIS.

§ 1940.327 Tiering.

To the extent possible, FmHA may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous States have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA staff have an understanding of which States have such requirements and how they apply to applicant's proposals. It will be the responsibility of each State Director to determine the applicable State requirements and to establish a working relationship with the State personnel responsible for their implementation.

(b) In processing projects located within States having State NEPA's, the preparer of the FmHA assessment will determine as early as possible in the assessment process whether the project falls under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified will be taken.

(1) The applicant has complied with the State's NEPA, and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the State will be considered in the FmHA's review, and any supporting information used by the State will be requested. However, the State's finding can never be the total basis for FmHA's environmental impact determination. An independent and thorough review in accordance with the requirements of this subpart must be conducted by the preparer.

(2) The applicant has complied with the State NEPA, and it was determined under its implementing guidelines that a significant impact will result. This fact will be given great weight in the Agency's environmental determination. However, the State's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA's. In such a case, if the preparer does not believe that a significant impact will result under Agency guidelines for determining significant im-

pacts, the environmental assessment will be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the State's. However, the assessment cannot be completed until the State's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the preparer. An environmental impact determination will then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA to prepare an impact statement. Consequently, as soon as it is clear to the preparer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the State's. Coordination with State personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate State personnel.

§ 1940.329 Commenting on other Agencies' EIS's.

(a) State Directors are authorized to comment directly on EIS's prepared by other Federal agencies. In so doing, comments should be as specific as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation (Exhibit A of this subpart). Copies of comments addressing land use questions will be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the State Director will notify the Administrator.

§ 1940.330 Monitoring.

(a) FmHA staff who normally have responsibility for the postapproval inspection and monitoring of approved projects will ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff, as identified in paragraph (a) of this section, will review the action's approval documents and consult with the preparer of the action's environmental review document prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The preparer will directly monitor actions containing difficult or complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff will obtain the position of the preparer for those conditions developed as a result of the environmental review.

(e) Whenever noncompliance with an environmental special condition is detected by FmHA staff, the preparer and the SEC will be immediately informed. The approving official will then take appropriate steps, in consultation with the responsible program office, the SEC and preparer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) *Objective.* The basic objective of FmHA's public involvement process is threefold. It is to ensure that interested citizens can readily obtain knowledge of the environmental review status of FmHA's funding applications, have the opportunity to input into this review process before decisions are made, and have access to the environmental documents supporting FmHA decisions.

(b) *Public notice requirements.* (1) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA in the FEDERAL REGISTER are explained in § 1940.320 of this subpart. With respect to notification within the project area, the applicant will be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice will be published in easily readable type in the nonlegal section of the newspaper(s). It will also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice will be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FmHA has identified to be so notified. It will also be posted at a readable location on the project site. The applicant will provide FmHA with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting will be accomplished at least 14 days prior to the date of the meeting.

(2) Coincident with the distribution of either a draft or final EIS, a notice of the statement's availability will be published within the project area in the same manner as a notice of intent to prepare an EIS. FmHA will request EPA to publish in the FEDERAL REGISTER a notice of the statement's availability in accordance with EPA's requirements and pursuant to § 1506.10 of the CEQ regulations.

(3) For Class II actions that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice will be published in the same manner as a notice of intent to prepare an EIS but will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies will be sent to the same parties that are required to be sent a notice of intent, as specified in paragraph (b)(1) of this section, with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant will provide FmHA with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice. This notification procedure does not apply to actions reviewed solely on the basis of a Class I assessment.

(4) The public notice procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in Exhibit C of this subpart. These procedures apply to actions that require either an EIS, Class II assessment or Class I assessment. However, whenever an action normally classified as a categorical exclusion requires a Class I assessment because of the potential impact to one of these important land resources, no public notice procedures apply in the course of completing the Class I assessment. When applicable to an action, as specified in Exhibit C of this subpart, these public notice procedures can apply at two distinct stages. The first stage, a preliminary notice, applies to any of the five important land resources. The second stage, a final notice, is followed by a fifteen-day public review period and applies only to actions that will impact floodplains or wetlands. For Class II actions, this final notice pro-

cedure must be combined with any applicable finding of no significant environmental impact, which is described in paragraph (b)(3) of this section. Individual copies of the preliminary and final notices will be sent to the same parties that are required to be sent a notice of finding of no significant impact, as specified in paragraph (b)(3) of this section, with the following exception. Whenever property owners affected by proposed mitigation measures, such as proposed hookup restrictions on portions of water or sewer lines that will traverse floodplains, are advised of these proposed measures in a preliminary notice, these property owners need not be sent copies of the final notice as long as the mitigation measures in the final notice are unchanged from the preliminary notice and no property owners raised objections or concerns over the mitigation measures.

(5) The public notice requirements associated with holding a public information meeting are specified in paragraph (c) of this section.

(c) *Public information meetings.* (1) Public information meetings will be held for an action undergoing an EIS as specified in § 1940.320 of this subpart. As part of the EIS process, a public information meeting will be held near the project site to discuss and receive comments on the draft EIS. It will be scheduled no sooner than 15 days after the release of the draft EIS. It will be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification will also be developed in the same manner. The meeting will be chaired by the State Director or a designee and will be fully recorded so that a transcript can be produced. The applicant will be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting will be combined with public meetings required by other involved agencies.

(2) Whenever a public information meeting is held as part of the completion of an environmental assessment, it will be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting will not be required. Rather a summary of the meeting to include the major issues raised will be prepared by the FmHA official who chaired the meeting.

(d) *Distribution of environmental documents.* FmHA officials will promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director or approval official for project activities and from the Administrator on other activities subject to environmental review.

§ 1940.332 Emergencies.

(a) *Action Requiring EIS.* When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety.

(b) *Action Not Requiring EIS.* When an emergency circumstance makes it necessary to take an action with apparent non-significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will be so notified. The Administrator reserves the authority to waive or amend all procedural aspects of this subpart relating to the preparation of environmental assessments including but not limited to the applicant's submission of Form FmHA 1940-20, public notice requirements and/or their associated comment periods, the timing of the assessment process, and the content of environmental review documents. Alternative arrangements will be established on a case by case basis taking into account the nature of the emergency and the time reasonably available to respond to it. These alternative arrangements will, to the extent possible, attempt to achieve the substantive requirements of this subpart such as avoiding impacts to important land resources, when practicable, and minimizing potential adverse environmental impacts. In all cases, the environmental findings and determinations required for Class I and Class II assessments must be executed by the appropriate FmHA officials prior to approval of the action and be based upon the best information available under the circumstances and the prescribed alternative arrangements. (Refer to paragraph (a) of this section should the approval official for the action determine that an EIS is necessary.) Additionally, all applicable consultation and coordination procedures required by law or regulation will be initiated with the appropriate Federal or State agency(s). Such procedures will be accomplished in the most expeditious manner possible and modified to the extent necessary and mutually agreeable between FmHA and the affected agency(s). The provisions of this paragraph are limited to the same emergency circumstances and scope of action as specified in paragraph (a) of this section.

§ 1940.333 Applicability to planning assistance.

The award of FmHA funds for the purpose of providing technical assistance or planning assistance will not be subject to any environmental review. However, applicants will be expected to consider in the development of their plans and to generally document within their plans:

(a) The existing environmental quality and the important environmental factors within the planning area, and

(b) The potential environmental impacts on the planning area of the plan as well as the alternative planning strategies that were reviewed.

§ 1940.334 Direct participation of State Agencies in the preparation of FmHA EISs.

FmHA may be assisted by a State Agency in the preparation of an EIS subject to the conditions indicated below. At no time, however, is FmHA relieved of its responsibilities for the scope, objectivity, and content of the entire statement of any other responsibility under NEPA.

(a) The FmHA applicant for financial assistance is a State Agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA furnishes guidance to the State Agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA provides, early in the planning stages of the project, notification to and solicits the views of any land management entity (State or Federal Agency responsible for the management or control of public lands) concerning any portion of the project and its alternatives which may have significant impacts upon such land management entities; and

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this section, FmHA prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA proposals for legislation.

(a) As stated in § 1940.312(d)(4) of this subpart, all FmHA proposals for legislation will receive an environmental assessment. The definition of such a proposal is contained in § 1508.17 of the CEQ regulations.

(b) The environmental assessment and, when necessary, the EIS will be prepared by the responsible Agency staff that is developing the legislation.

(c) If an EIS is required, it will be prepared according to the requirements of § 1506.8 of the CEQ Regulations.

§ 1940.336 Contracting for professional services.

(a) Assistance from outside experts and professionals can be secured for the purpose of completing EIS, assessments, or portions of them. Such assistance will be secured according to the Federal and Agriculture Procurement Regulations contained in Chapters 1 and 4 of Title 48 of the Code of Federal Regulations.

(b) The contractor will be selected by FmHA in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work will be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Administrator will provide the State Director with a proposed scope of work for use in securing such professional services.

(d) Applicants will not be required to pay the costs of these professional services.

§§ 1940.337—1940.349 [Reserved]

§ 1940.350 Office of Management and Budget (OMB) control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and has been assigned OMB control number 0575-0094.

EXHIBITS TO SUBPART G

EXHIBIT A—DEPARTMENTAL REGULATION

Number: 9500-3.

Subject: Land Use Policy.

Date: March 22, 1983.

OPI: Land Use Staff, Soil Conservation Service.

SECTION

1 Purpose
2 Cancellation
3 Policy
4 Abbreviations
5 Definitions
6 Responsibilities
7 Appendix A

1 PURPOSE

The Nation's farmlands, forest lands, rangelands, flood plains, and wetlands are unique natural resources providing food, fiber, wood, and water necessary for the continued welfare of the people of the United States and protection from floods. Each year, large amounts of these lands are converted to other uses. Continued conversion of the Nation's farmlands, forest lands, and rangelands may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and the demands of export markets. Continued conversion of the Nation's wetlands may reduce the availability of adequate supplies of suitable-quality water, indigenous wildlife species, and the productive capacity of the Nation's fisheries. Continued encroachments on flood plains decrease the natural flood-control capacity of these land areas, create needs for expensive manmade flood-control measures and disaster-relief activities, and endanger both lives and property.

Land use allocation decisions are matters of concern to USDA. Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwarranted conversion of farm, range, and forest lands and wetlands from existing uses and unwarranted encroachment on flood plains; maintain and enhance agricultural and forest production capabilities; maintain wildlife, fish, and seafood habitat; provide or improve community services and facilities; assure appropriate environmental quality; and assure adequate supplies of suitable-quality water. These needs are highly interdependent and often compete with each other for the limited supply of available land and water.

It is Departmental policy to promote land use objectives responsive to current and long-term economic, social, and environmental needs. This policy recognizes the rights and responsibilities of State and local governments for regulating the uses of land under their jurisdiction. It also reflects the Department's responsibility to (a) assure that the United States retains a farm, range, and forest land base sufficient to produce adequate supplies, at reasonable production costs of high-quality food, fiber, wood, and other agricultural products that may be needed; (b) assist individual landholders and State and local governments in defining and meeting needs for growth and development in such ways that the most productive farm, range, and forest lands are protected from unwarranted conversion to other uses; and (c) assure appropriate levels of environmental quality.

In accordance with the authority contained in 7 U.S.C. 1010 and 7 U.S.C. 2204 and consistent with 7 CFR 2.19(f) and provisions of the Farmland Protection Policy Act, Subtitle I, Title XV, Pub. L. 97-98, the Department sets forth this statement of policy on land use.

2 CANCELLATIONS

This regulation supersedes Secretary's Memorandum 9500-2 dated March 10, 1982.

3 POLICY

Federal agencies, in implementing programs, make decisions that affect current and potential uses of land. The Department will:

a. Promote and support planning procedures that allow landholders, interest groups, and State and local governments to have input at all appropriate stages of the decisionmaking process for public projects, programs, or activities; that recognize the rights and responsibilities of landholders in making private land use decisions; and that recognize the responsibility of governments in influencing how land may be used to meet public needs.

b. Assure that programs of the agencies within the Department discourage the unwarranted conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, and prime rangelands, as defined in appendix A; the unwarranted alteration of wetlands or flood plains; or the unwarranted expansion of the peripheral boundaries of existing settlements.

c. Manage both its land use-related programs and USDA-administered land in such manner as to (1) demonstrate leadership in meeting short- and long-term needs for growth and development, while assuring adequate supplies of needed food, fiber, and forest products; (2) assure appropriate levels of environmental quality and adequate supplies of water; and (3) discourage unwarranted expansion of peripheral boundaries of existing settlements. Whenever practicable, management of USDA-administered lands shall be coordinated with the management of adjacent private and other public lands.

d. Conduct multidisciplinary land use research and education programs responsive to identified State, local, and national needs and, when requested, assist State and local governments, citizens groups, and individual landholders in determining a alternative land use values, thereby enabling local officials to make judicious choices to meet growth and development needs and to protect the community's farm- and forest-related economic base.

e. Assist landowners and State and Federal agencies in the reclamation of abandoned surface-mined lands. This reclamation will help eliminate safety, health, and environmental problems.

f. Assist in planning for the extraction of coal and other nonrenewable resources in such manner as to facilitate restoration. This restoration would reestablish or enhance food, fiber, or forest productivity or contribute to other beneficial uses of the land as mining is completed in defined areas as sites.

g. Advocate among Federal agencies:

(1) The retention of important farmlands, rangelands, forest lands, and wetlands, whenever proposed conversions to other uses (a) are caused or encouraged by actions or programs of a Federal agency or (b) require licensing or approval by a Federal agency, unless other needs clearly override the benefits derived from retention of such lands; and

(2) Actions that reduce the risk of flood loss and soil erosion; that minimize impacts of floods on human safety, health, and welfare; that preserve natural flood-control and other beneficial functions and values of wetlands and flood plains; and that reduce future need for expensive manmade flood-control systems, disaster-relief assistance, or Federal rehabilitation assistance in the event of flooding.

4 ABBREVIATIONS

USDA—U.S. Department of Agriculture.

NRE—Natural Resources and Environment Committee.

5 DEFINITIONS

Complete definitions for the terms "farmlands," "forest lands," "rangelands," "wetlands," and "flood plains" are found in appendix A.

6 RESPONSIBILITIES

a. The Office of the Secretary is responsible for (1) encouraging, assisting, and coordinating efforts of other Federal departments and agencies to implement policies and procedures supportive of the objectives of this regulation; (2) resolving issues and acting on recommendations raised to the Secretary's Policy and Coordination Council by the Departmental committees; and (3) raising unresolved issues and recommending actions to the appropriate Cabinet Council.

b. The NRE Committee, created under the Secretary's memorandum dated July 22, 1981, will provide departmentwide leadership for the implementation of this policy statement. In implementing this policy, the NRE Committee will:

(1) Recommend Departmental guidelines to the Secretary and schedule reviews of each agency's procedures for implementation;

(2) Monitor implementation of this policy;

(3) Encourage, support, and provide guidance to State- and local-level USDA committees in implementing this policy;

(4) Coordinate the work of USDA agencies in carrying out the provisions of this regulation; and

(5) Advise the Secretary annually as to progress and problems encountered.

c. Each USDA agency will review and make the necessary administrative changes in existing and proposed rules, regulations, guides, practices, or policies and propose needed legislative changes to bring agency programs into compliance with the provisions of this regulation.

d. Each USDA agency having programs that will be affected by this regulation shall develop implementing procedures, consistent with the guidelines provided by the NRE Committee, and shall provide to all offices of the agency copies of this policy statement, Departmental guidelines, and agency procedures to implement this policy.

e. USDA agencies will encourage State and local governments and individual landholders to retain important farmlands, rangelands, forest lands, and wetlands and to avoid encroachments on flood plains when practicable alternatives exist to meet developmental needs. Appropriate agencies will assist State and local governments, citizens groups, and individual landholders in identifying options and determining alternative land use values as the basis for making judicious choices in meeting growth and development needs.

f. USDA agencies will encourage other Federal, State, and local government agencies to exchange information on plans or projects that may impact on important farmlands, rangelands, forest lands, wetlalds, or flood plains and to involve appropriate USDA agencies early in the planning process. USDA agencies will participate in a timely manner at appropriate stages in the planning process on Federal or federally assisted projects or activities when requested. Where opportunity for such participation is not forthcoming, the Department may intercede, consistent with policy contained in this regulation, at appropriate stages in the decisionmaking process through review and comments on plans, as provided for in authorized administrative review procedures for such projects, activities, or actions.

g. When land held either in public or private ownership will be directly affected by USDA actions, the implementing agency will notify the affected landholders at the earliest time practicable of the proposed action and provide such landholders an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it.

h. Agencies of USDA will assure that their actions, investments, and programs on non-Federal lands will conform, to the extent practicable, with the uses permitted under land use regulations adopted by State or local governments.

i. When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or flood plains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon flood plains, unless (1) there is a demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid the conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly and indirectly.

APPENDIX A—DEFINITIONS

The following definitions apply to this Departmental Regulation.

1 IMPORTANT FARMLANDS [1]

a. Prime Farmlands [1]

(1) *General Criteria.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce, economically, sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0- to 7-percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0- to 5-percent slopes.

(2) *Specific Criteria.* Prime farmlands must meet all the following criteria. Terms used in this section are defined in these USDA publications: "Soil Taxonomy, Agriculture Handbook 436," "Soil Survey Manual, Agriculture Handbook 18," "Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282," "Wind Erosion Forces

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[1] 7 CFR 657.5.

in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346," and "Saline and Alkali Soils, Agriculture Handbook 60."

(a) The soils have:

1. Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches, or in the root zone (root zone is the part of the soil that is penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include but are not limited to grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

2. Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or

3. Acidic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality; and

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches, have a mean annual temperature higher than 32 degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an 0 horizon is higher than 47 degrees Fahrenheit; in soils that have no 0 horizon, the mean summer temperature is higher than 59 degrees Fahrenheit; and

(c) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep; and

(d) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and

(e) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhoc/cm and the exchangeable sodium percentage is less than 15; and

(f) The soils are not flooded frequently during the growing season (less often than once in 2 years); and

(g) The product of K (erodibility factor) times the percent slope is less than 2.0, and the product of I (soils erodibility) times C (climatic factor) does not exceed 60; and

(h) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches, and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees Fahrenheit or higher; and

(i) Less that 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

b. Unique Farmland [1]

(1) *General Criteria.* Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to produce, economically, sustained high-quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific Characteristics.* Unique farmland is used for a specific high-value food or fiber crop. It has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed irrigation system. It combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

c. Additional Farmland of Statewide Importance [1]

This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

d. Additional Farmland of Local Importance [1]

In some local areas, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

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[1] See footnote 1 on previous page.

2 PRIME FOREST LANDS [2]

Because of the multiple use of forested lands, several categories, e.g., timber, wildlife, and recreation, may be developed. For purposes of this regulation only, the following timberland definitions will apply.

a. Prime Timberland [2]

Prime timberland is land that has soil capable of growing wood at the rate of 85 cubic feet or more/acre/year (at culmination of mean annual increment) in natural stands and is not in urban or built-up land uses or water. Generally speaking, this is land currently in forest, but does not exclude qualifying lands that could realistically be returned to forest. Delineation of these lands will be in accordance with national criteria.

b. Unique Timberland [2]

Unique timberlands are lands that do not qualify as prime timberland on the basis of producing less than 85 cubic feet/acre/year, but are growing sustained yields of specific high-value species or species capable of producing specialized wood produsts under a silvicultural system that maintains soil productivity and protects water quality. Delineation of these lands will be in accordance with national criteria.

c. Timberland of Statewide Importance [2]

This is land, in addition to prime and unique timberlands, that is of statewide importance for the growing of wood. Criteria for defining and delineating these lands are to be determined by State forestry planning committees or appropriate State organizations.

d. Timberlands of Local Importance [2]

In some local areas, there is concern for certain additional forest lands for the growing of wood, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

3 WETLANDS [3]

Wetlands are those areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

4 FLOOD PLAINS [3]

The term "flood plain" means the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

4 PRIME RANGELAND [4]

Prime rangeland is rangeland which, because of its soil, climate, topography, vegetation, and location, has the highest quality or value for grazing animals. The (potential) natural vegetation is palatable, nutritious, and available to the kinds of herbivores common to the area.

EXHIBIT B—DEVELOPMENT AND IMPLEMENTATION OF NATURAL RESOURCE MANAGEMENT GUIDE

1. The State Director shall complete the natural resource management guide within 12 months from the effective date of this subpart and issue the guide as a State supplement after prior approval by the Administrator. A summary of the basic content, purposes, and uses of the guide is contained in § 1940.305 of this subpart. The guide shall be prepared in draft form and be provided for review and comment to USDA agencies, appropriate Federal and State agencies, State and regional review agencies assigned the consulation requirements of Executive Order 12372, as well as interested localities, groups, and citizens. Also at least one public information meeting shall be held on the draft which shall be followed by a 30-day period for the submission of public comments. Public notification of this meeting shall be made in the same manner as the notification process for a scoping meeting. (See § 1940.320(c) of this subpart). Additionally, the public shall be informed that copies of the draft guide will be made available from the State Office upon request. After completion of this public review, the draft will be revised as necessary in light of the comments received and provided as a final draft State Supplement to the Administrator for review and approval. Any concerns and comments of the Administrator will be addressed by the State Director and the guide completed. Upon the Administra-

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[2] Prime Forest Land Definition and Criteria, U.S. Forest Service, May 26, 1977.

[2] See footnote 2 on previous page.

[3] Definitions contained in Executive Orders 11988 and 11990.

[4] USDA proposed definition for intradepartmental use only.

tor's approval and the fulfillment of the requirements of paragraph 4. of this exhibit, the natural resource management guide shall then become part of any program investment strategies developed by the State Director for the purpose of addressing the rural needs of the State. Although a 12-month period has been established for the completion of a natural resource management guide, this deadline is not to be construed as curtailing or postponing the implementation of existing environmental laws, regulations, Executive orders or the Departmental Regulation 9500-3, Land Use Policy, with respect to individual project reviews, nor giving anyone any rights or claims with respect to the completion or content of the guide.

2. The natural resource management guide needs to be developed in full recognition of its role as an internal Agency planning tool and with sensitivity to the Agency's mission.

3. After the Administrator approves the natural resource management guide, it will become effective 4 months from that date. This interim period shall be used to inform local, State, and Federal agencies, localities, organizations, and interested citizens of the content of the guide. In this manner, those parties intending to seek FmHA assistance or to coordinate FmHA assistance programs with their own programs will be able to gain for their planning needs an understanding of our guide.

4. Completed natural resource management guides shall be reviewed every 2 years and updated by the State Director to reflect newly identified geographical areas of concern or policy revisions at the lational, State, regional or local level. They will also be revised, as necessary, through appropriate guidance from the Administrator. Revisions shall be transmitted to the Administrator for postapproval and shall be considered approved if either no comments are raised by the Administrator within 30 days of receipt of the State Director's transmittal letter or the administrator specifically approves them before the 30 days expire. Public review of a revision will not be required. However, if in the opinion of the State Director the proposed revision will substantially change the previously adopted natural resource management guide, a public review shall be conducted of the revision in the same manner as that described in paragraph 1 of this exhibit for the development of the original guide. Such review shall occur prior to the transmittal of the revision to the Administrator. If the State Director believes that at the expiration of any 2-year review period there is need to update the guide, a statement to this effect shall be filed with the Administrator.

5. The foundation for the natural resource management guide is the identification of the types of land uses or environmental factors deserving attention and their geographical location within the State. An inventory or listing shall be developed, therefore, of the important land uses within the State. This inventory will be accomplished by assembling existing data and information compiled by those Federal, State, and local agencies that have jurisdiction or expertise regarding the land uses or environmental factors. At a minimum, the inventory shall consist of available documents, listings, maps, or graphic materials describing the location of the following:

a. National Register of Historic Places to include monthly supplements as designated by the Department of the Interior (DOI) and the State Historic Preservation Plan. This list is issued as a State supplement to Subpart F or Part 1901 of this Chapter;

b. Rivers designated as part of the Wild and Scenic Rivers System and rivers under study for inclusion in the system, as published by DOI;

c. Important farmlands;

d. Prime rangelands.

e. Prime forestlands;

f. Wetland inventory;

g. Floodplain inventory as issued by the Federal Emergency Management Administration;

h. Endangered Species and Critical Habitats as listed or proposed for listing by the Department of Commerce (DOC) and DOI;

i. Sole source aquifer recharge areas as designated by the Environmental Protection Agency (EPA);

j. Air Quality Control Regions as designated by EPA;

k. National Registry of Natural Landmarks at published by DOI;

l. Coastal Barrier Resources System;

m. State inventories or planning documents identifying important land uses, particularly those not covered by the above items, such as wildlife refuges, important habitats, and areas of high water quality, or scenic or recreational value;

n. Agricultural districts or other similar zoning classifications for agricultural land protection; and

o. Coastal Zone Management Areas.

6. The Administrator shall be responsible for assisting State Directors in obtaining listings and inventories of resources protected by Federal statutes and regulations. The State Director has the responsibility for assembling documents on important environmental resources or areas identified in State and substate laws, regulations, plans, and policies.

7. Development of the inventory by the State Director will require consultation and assistance from a variety of agencies and experts. This consultation should begin with Department agencies and be accomplished

through appropriate, State-level USDA committees. The objective should be to determine the land classification data that has been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the state level. The Memorandum of Understanding executed in May 1979 between the Soil Conservation Service (SCS) and FmHA should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000-D, Exhibit A, which is available in any FmHA Office.) Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with substate regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies within the supervisor's territorial jurisdiction.

8. Another important element of the natural resource management guide shall be the examination of any major environmental impacts on the State or a substate area resulting from the cumulative effects of FmHA-assisted project over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate State agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed guidance on the accomplishment of this cumulative impact section of the natural resource management guide, as well as the overall content of the guide, shall be provided by the Administrator. In preparing the State's natural resource management guide and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex guides and the amassing of huge inventories is not our goal. In the end, the material must be useable and serve as a tool for better decisionmaking. The basic purposes of this guide and inventory, then, are to provide a basis for developing comprehensive, statewide, rural development investment strategies that (i) do not conflict with Federal, State, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short- or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance Federal, State, and local plans to preserve these resources.

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EXHIBIT C—IMPLEMENTATION PROCEDURES FOR THE FARMLAND PROTECTION POLICY ACT; EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT; EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS; AND DEPARTMENTAL REGULATION 9500-3, LAND USE POLICY

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97-98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Soil Conservation Service (SCS), as required by the Act, has promulgated implementation procedures for the Act at 7 CFR Part 658 which are hereafter referred to as the SCS rule. This rule applies to all federal agencies. The Departmental Regulation 9500-3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this subpart and affects only USDA agencies. For additional requirements that apply to some Farmer Program loans and guarantees and loans to an Indian Tribe or Tribal Corporation and that cover the conservation of wetlands and highly erodible land, see Exhibit M of this subpart.

2. *Implementation.* Each proposed lease or disposal of real property by FmHA and application for financial assistance or subdivision approval will be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the lease, disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.[1] Since

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[1] See special procedures in item 3 of this Exhibit if the existing structure or real property is located in a floodplain or wetland.

these actions have no potential to convert land uses, this finding would simply be made by the preparer in completing the environmental assessment for the action. Also, actions that convert important farmland through the construction of on-farm structures necessary for farm operations are exempt from the farmland protection provisions of this Exhibit. For other actions, the following implementation steps must be taken:

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the Appendix to the Departmental Regulation. The SCS rule also defines important farmland for purposes of the Act. Since the SCS's definition of prime farmland differs from the Departmental Regulation's definition, both definitions must be used and if either or both apply, the provisions of this Exhibit must be implemented. It is important to note the definition of important farmland in both the SCS rule and the Departmental Regulation because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government to be of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," the preparer must determine if the project is either located in or will affect one or more of the land resources covered by the SCS rule or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000-D, Exhibit A, available in any FmHA office.)

(1) *Important Farmland, Prime Forest Land, Prime Rangeland*—The preparer of the environmental review document will review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. If the general area contains important farmland or if no important farmland map exists for the project area, the preparer of the environmental review will request SCS's opinion on the presence of important farmland by completing Form AD-1006, "Farmland Conversion Impact Rating," according to its instructions, and transmitting it to the SCS local field office having jurisdiction over the project area. This request will also indicate that SCS's opinion is needed regarding the application to the project site of both definitions of prime farmland, the one contained within its rule and the one contained within the Departmental Regulation. SCS's opinion is controlling with respect to the former definition and advisory with respect to the latter. No request need be sent to SCS for an action meeting one of the exemptions contained in item number 2 of this exhibit.

(2) *Floodplain*—Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Administration (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800-638-6620. When more specific information is needed on the location of a floodplain, for example the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J of this subpart contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: The U.S. Fish and Wildlife Service (FWS), SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) *Wetlands*—FWS is presently preparing wetland maps for the nation. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning the status of wetland mapping by FWS and information on State and local wetland surveys. Exhibit K of this subpart contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information can be obtained by using topographic and soils maps or aerial photographs. State-specific lists of wetland soils and wetland vegetation

are also available from the FWS Regional Wetland coordinators. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of FWS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in Exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that Exhibit.

b. Findings

(1) *Scope*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the implementation requirements of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agenices, the FmHA preparer must determine, as the second implementation step, whether the applicant's proposal:

(a) Is compatible with State, unit or local government, and private programs and policies to protect farmland; and

(b) Either will have no effect on important land resources; or

(c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and

(d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) *Determination of No Effect*—If the preparer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusions based on whichever document is applicable to the action being reviewed.

(3) *Determination of Effect or Incompatibility*—Whenever the preparer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken.

(a) *Search for Practicable Alternatives*[2]—In consultation with the applicant and the interested public, the preparer will carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility Possible alternatives include:

(i) The selection of an alternative site;

(ii) The selection of an alternative means to meet the applicant's objectives; or

(iii) The denial of the application, i.e., the no-action alternative.

When the resource that may be converted is important farmland, the preparer will follow the Land Evaluation and Site Assessment (LESA) point system contained within the SCS rule in order to evaluate the feasibility of alternatives. When the proposed site receives a total score of less than 160 points, no additional sites need to be evaluated. Rather than use the SCS LESA point system, the State Director has the authority to use State or local LESA systems that have been approved by the governing body of such jurisdiction and the SCS state conservationist. After this authority is exercised, it must be used for all applicable FmHA actions within the jurisdiction of that approved LESA system.

(b) *Inform the Public*—The Department Regulation requires us in section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that lose their status as an exclusion for any of the reasons stated in § 1940.317(e) of this subpart. The notification will be published and documented in the manner specified in § 1940.331 of this subpart and will contain the following information:

(i) A brief description of the application or proposal and its location;

(ii) The type(s) and amount of important land resources to be affected;

(iii) A statement that the application or proposal is available for review at an FmHA field office (specify the one having jurisdiction over the project area); and

(iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA within 30 days following the date of publication. (Specify the FmHA office processing the application or proposal for receipt of comments.)

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[2] When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) *Determine Whether Practicable Alternative Exists*—(i) Alternative exists—If the preparer concludes that a practicable alternative exists, the preparer will complete step 2b(3)(e)(ii) of this exhibit and transmit the assessment for the approving official's review in the manner specified in § 1940.316 of this subpart. If the findings of this review are similar to the preparer's recommendation, FmHA will inform the applicant of such findings and processing of the application will be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the preparer will work closely with the applicant to this end. Upon receipt of the amended application, the preparer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the preparer's recommendations, the former will ensure that the findings are appropriately documented in step 2b(3)(e)(ii) of this exhibit and any remaining consideration given to mitigation measures, step 2b(3)(d) of this exhibit.

(ii) No Practicable Alternative Exists—On the other hand, if the preparer concludes that there is no practicable alternative to the conversion, the preparer must then continue with step 2b(3)(d) of this exhibit, immediately below.

(d) *Search for Mitigation Measures*—Once the preparer determines that there is no practicable alternative to avoiding the conversion or incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) *Document Findings*—Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and (is/is not) compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and (is/is not) incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is a practicable alternative to this action, and the processing of this application be discontinued.

(f) *Implement findings*—The completed environmental assessment and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders will be processed and made according to § 1940.316 of this subpart. Whenever this determination is as stated in step 2b(3)(e)(i) above, the action will be so structured as to ensure that any recommended mitigation measures are accomplished. See § 1940.318(g) of this subpart. Whenever the determination is as stated in step 2b(3)(e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA involvement will be as specified in Item 2b(3)(c)(i) of this exhibit.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is The Affected Resource Under Executive Order 11988 and 11990.* a. *Scope.* (1) Geographical Area—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this Exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the preparer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

(a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Emergency operation centers or data storage centers which contain records or services that any become lost or inoperative during flood and storm events; and

(d) Multi-family housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact—The Executive ordres differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, there would be an impact to a floodplain whenever either (a) the action or its related activities would be located within a floodplain, or (b) the action through its indirect impacts has the potential to result in development within a floodplain. The only exception to this statement is when the preparer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. *Treatment of Existing Structures.* (1) Non-FmHA-Owned Properties—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this exhibit must be accomplished for any action located in a floodplain or wetland and involving either (a) the purchase of an existing structure or facility or (b) the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA-Owned Real Property—The requirement in paragraph 3 b (1) immediately above also applies to any substantial improvements made to FmHA-owned real property with the exception of the public notice requirements of this exhibit. Irrespective of any improvements, whenever FmHA real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA official responsible for the conveyance, to the uses of the property by the leasee or purchaser and any successors, except where prohibited by law. Appropriate restrictions will be developed in consultation with the U.S. Fish and Wildlife Service (FWS) as specified in the Memorandum of Understanding with FWS contained in Subpart LL of Part 2000 of this chapter. Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3 d

of this exhibit and Subpart C of Part 1955 of this Chapter for guidance on the proper formats to be used with respect to notices and deed restrictions. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale.

c. *Mitigation measures.* (1) Alternative Sites—As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, i.e., a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures—Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

(a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulations;

(b) Preserve floodplain and wetland values and functions through public ownership; e.g., fee title, easements and development rights;

(c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;

(d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains—As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states "agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in the land."

(d) *Additional Notification Requirement.* (1) Final Notice—Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice will be published and distributed in the manner specified in § 1940.331 of this subpart and contain the following information.

(a) A description of the proposd action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigate them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification—For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.* The National Flood Insurance Program establishes the floodplain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have

been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2). It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA financial assistance unless the project area is participating in the National Flood Insurance Program.

[53 FR 36262, Sept. 19, 1988]

EXHIBIT D—IMPLEMENTATION PROCEDURES FOR THE ENDANGERED SPECIES ACT

1. FmHA shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property by FmHA and to all FmHA applications for financial assistance and subdivision approval, including those applications which are exempt from environmental assessments. (See § 1940.310.) Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

2. State Directors shall ensure that State, District, and County Offices maintain current publications of listed and proposed species as well as critical habitats found in their respective jurisdictions.

3. When an application to FmHA involves financial assistance or permit approval from another Federal agency(s), the FmHA reviewer shall work with the other Agency to determine a lead Agency for the consultation process. When FmHA is not the lead Agency, the reviewer shall ensure that the lead Agency informs the approporiate Area Manager, U.S. Fish and Wildlife Service (FWS), or Regional Director, National Marine Fisheries Service (NMFS), of FmHA's involvement.

4. Each disposal action, application for financial assistance or subdivision approval shall be reviewed by the FmHA official responsible for completing environmental assessments in order to determine if the proposal either may affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat.

a. For applications subject to environmental assessments, this review shall be accomplished as part of the assessment.

b. For those applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," and shall be accomplished as early as possible after receipt of the application and prior to approval of the application.

c. For applications subject to an environmental impact statement, FmHA shall request from the Area Manager, FWS, and the Regional Director, NMFS, a list of the proposed and listed species that may be in the area of the proposal. Within 30 days, the FWS and NMFS will respond to FmHA with this list. FmHA shall then conduct, as part of the process of preparing the draft environmental impact statement, a biological assessment of these species to determine which species are in the area of the proposal and how they may be affected. This biological assessment should be completed within 180 days or a time mutually agreed upon between FmHA and FWS or NMFS. Upon completion of the biological assessment, if FmHA determines either that the proposal may affect a listed species or critical habitat or is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, the formal consultation procedures shall be initiated as specified in paragraph 7b below. To the extent practical, these procedures shall be concluded and their results reflected in the draft EIS. For all draft EISs in which FmHA determines there will be no effect upon a listed or proposed species or critical habitat and FWS or NMFS indicated the presence of such species upon the initial inquiry, a copy of the draft shall be provided to that agency for review and comment.

5. As indicated in paragraph 4 above, the focus of this review process is to determine if the proposal will affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. Because this impact terminology is specific to the Act, it is important to understand its meaning.

a. To jeopardize the continued existence of a species means to engage in a project which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute jeopardy would be expected to vary among listed species.

b. The destruction or adverse modification of a critical habitat means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include but are not limited to those diminishing the following requirements for:

(i) Space for individual and population growth and for normal behavior;

(ii) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(iii) Cover or shelter;

(iv) Sites for breeding, reproduction, or rearing of offspring; and

(v) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

6. It is also important to note that the consultation procedures differ when the subject of the consultation is a listed species or critical habitat as opposed to a proposed species or critical habitat. The latter are defined as those that the Secretary of Interior or Commerce are considering for listing and have so proposed through notification in the FEDERAL REGISTER. When listed species or critical habitats are invloved, FmHA shall initiate formal consultation procedures whenever it determines that a proposed project may affect them, either beneficially or adversely. For proposed species or critical habitats, FmHA shall first determine if the proposed project is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Whenever this determination is made, FmHA shall confer with the appropriate agency identified in paragraph 7 of this exhibit and, in so doing, shall focus on (i) determining the status of the listing process, and (ii) attempting to cooperatively develop alternatives or measures for inclusion in the project that avoid or mitigate the identified adverse impacts. The results of this process shall be documented in the environmental review being done for the proposed project and, if this review is an environmental assessment, shall be an important factor in determining the need for an environmental impact statement. No action shall be taken by the approving official on the application unitl the requirement to confer on proposed species or critical habitat has been completed. Paragraphs 7 through 9 of this exhibit outline the formal consultation procedure for listed species or critical habitats.

7. In initiating the review process for a project, the list of species and critical habitats, including proposed, shall be examined to determine the potential for impacts. Projects planned within established communities are less likely to affect listed or proposed species or their critical habitat. Projects to be located in remote areas, heavily forested areas and/or previously undisturbed areas are more likely to affect these species. For projects located in such areas, the reviewer shall, at a minimum, discuss the project's potential impact on listed or proposed species with officials of the appropriate State wildlife protection agency or the Area Manager, FWS, or the Regional Director, NMFS, as appropriate. The latter organization generally has responsibility for marine species. The specific list of species under NMFS's jurisdiction can be found at 50 CFR 222.23(a) and 227.4. Such discussions shall be considered as informal consultations and are not a substitute for the required consultation process outlined below.

a. Whenever the reviewer, after reviewing the list and contacting appropriate experts, formally determines that the proposal will have no effect on a listed or proposed species or its critical habitat, these review procedures are completed, unless new information comes to light as discussed in paragraph 9 of this exhibit, or consultation is requested by the appropriate Area Manager, FWS, or Regional Director, NMFS.

b. If the reviewer determines there may be an effect on a listed species or a critical habitat or is unable to make a clear determination, the reviewer shall so inform the SEC (assuming the reviewer is not the SEC). The latter shall either (i) convey a written request for consultation, along with available information to the appropriate Area Manager, FWS or Regional Director, NMFS, for the Federal region where the proposal will be carried out, or (ii) request Program Support Staff (PSS) to perform such consultation. FmHA shall initiate this formal consultation process and not the applicant. See paragraph 4.c. of this exhibit for initiating consultation where an environmental impact statement is being done for the application. Until the consultation process is completed, as outlined in 50 CFR 402.04, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall refrain from making any irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

8. Several possible responses may result from initiation of the formal consultation process with each requiring further specific actions.

a. Whenever the Area Manager, FWS, or Regional Director, NMFS, informs FmHA that insufficient information exists to conclude the consultation process, the SEC with assistance as feasible from the FWS or NMFS and State sources of expertise shall then obtain additional information and conduct, as needed, biological surveys or studies to determine how the proposal may affect listed species or their critical habitat. The cost and performance of such studies shall be handled in the same manner as in the preparation of an Environmental Impact Statement. (See § 1940.336 of this Subpart.)

b. Whenever the Area Manager, FWS, or Regional Director, NMFS, responds that the proposal will either promote the conservation of a listed species or is not likely to jeopardize the continued existence of a listed or proposed species or result in the destruction or adverse modification of its critical habitat, the FmHA reviewer shall formally make a similar determination, attaching the response as documentation. This concludes the formal consultation process unless new information comes to light as discussed in paragraph 9 of this exhibit.

c. Whenever the results of the consultation process include recommendations by the Area Manager, FWS, or Regional Director, NMFS, for modifications to the project which would enhance the conservation and protection of a listed species or its critical habitat, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe the recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

d. Whenever the appropriate Area Manager, FWS, or Regional Director, NMFS, determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national, regional, or great local significance, and (ii) that there are no reasonable and prudent alternatives to avoiding the listed species impact, the State Director can request the Administrator, through PSS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from section 7 of the Endangered Species Act is not warranted and the application shall be denied or, if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

9. Once completed, the consultation process shall be reinitiated by FmHA or upon request of the appropriate Area Manager, FWS, or Regional Director, NMFS, if:

a. New information or modification of the proposal reveals impacts that may affect listed or proposed species or their habitats; or

b. A new species is listed that may be affected by the proposal.

10. In completing the above compliance procedures, particularly when consulting with the referenced agencies, formally or informally, the preparer of the environmental review document will request information on whether any Category I or Category II species may be present within the project area. These are candidate species; they are presently under consideration for listing under section 4 of the Endangered Species Act. Category I species are those for which FWS currently has substantial date on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Currently data are being gathered concerning essential habitat needs and, for some species, data concerning the precise boundaries of critical habitat designations. Development and publication of proposed rules on such species is anticipated. Category II comprises species for which information now in the possession of the FWS indicates that proposing to list the species as endangered or threatened is possibly appropriate but for which conclusive data on biological vulnerability and threat(s) are not currently available to presently support proposed rules. Whenever a Category I or II species may be affected, the preparer of the environmental review document will determine if the proposed project is likely to jeopardize the continued existence of the species. Whenever this determination is made, the same compliance procedures specified in paragraph 6 of this exhibit for a proposed species will be followed. The purpose of the requirements of this paragraph is to comply with the National Environmental Policy Act as well as Departmental Regulation 9500-4, Fish and Wildlife Policy, which specifies that USDA agencies will avoid actions which may cause a species to become threatened or endangered.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT E—IMPLEMENTATION PROCEDURES FOR THE WILD AND SCENIC RIVERS ACT

1. Each application for financial assistance or subdivision approval as well as the proposed disposal of real property by FmHA shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the system. (For purposes of this

subpart, river segments in the Nationwide Inventory shall be treated the same as segments within the system with the exception of paragraph 8.) For applications subject to environmental assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA official responsible for completing the environmental assessment shall accomplish this review. (See § 1940.316 of this subpart.)

2. In order to effectively implement this review, State Directors shall ensure that State, District and County Offices maintain current listings of rivers within their respective States that are included in or designated for potential addition to the system as well as those identified in the Nationwide Inventory prepared by NPS.

3. For applications for water resources projects, as defined in § 1940.302(i) of this Subpart, the purpose of this review shall be to determine whether the proposal would have a direct and adverse effect on the values which served as the basis for the river's inclusion in the system or designation for potential addition. For other applications, the purpose of the review shall be to determine if the proposal would invade the river area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area. To make these determinations, the reviewer shall consult with the appropriate regional office of NPS if the proposal (i) would be located within one-quarter mile of the banks of the river, (ii) involves withdrawing water from the river or discharging water to the river via a point source, or (iii) would be visible from the river. The appropriate regional office of the Forest Service (FS) shall be contacted under similar circumstances when the effected river is on FS lands. Consultation shall be initiated by a written request for comments on the potential impacts accompanied by a description of the project and its location. The reviewer shall consult in other instances when the likelihood of an impact on a river in the system is identified as part of the environmental review. When the reviewer determines there is no potential impact on such a river, the documentation of this determination concludes the review process, unless reinitiation is required under paragraph 10 of this exhibit. In all other cases, the review is completed as specified below in paragraphs 4 through 9 of this exhibit.

4. If the review is at the County or District Office level, the reviewer can request the State Director (see § 1940.307 of this subpart) to perform the above consultation. The State Director can in turn make a similar request of the National Office. If not requested to perform the consultation for applications approvable at the County and District Office levels, the SEC shall be informed whenever NPS or FS advises that there is a potential for an adverse impact on a river within the system or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA and not the applicant. Until consultation is complete, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modifications or alternatives to the project.

5. If NPS or FS advises there is no potential for an adverse effect as described in paragraph 3 of this exhibit, this review process is concluded, unless the need to reinitiate arises. (See paragraph 10 of this exhibit.)

6. Whenever the results of the consultation process include recommendations by NPS or FS to modify the proposal in order to avoid an adverse effect, as described in paragraph 3 above, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe that the Regional Director's recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

7. If NPS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph 3 of this exhibit, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system, the FmHA applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied or shall request the headquarters staff of NPS or FS to further review the matter. No action shall be taken

by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

8. If NPS or FS advises that the proposal will have an adverse effect, as described in paragraph 3 of this exhibit, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with NPS or FS in order to formulate adequate measures or modification to avoid or mitigate the potential adverse effect. The purposes of such measures or modifications is to ensure that the proposal does not effectively foreclose the designation of a wild, scenic, or recreational river segment. Once concurrence is reached and documented with NPS or FS regarding modifications, the State Director shall require that they be incorporated into the proposal as either design changes or special conditions to the offer of assistance. If the State Director is not able to reach an agrement with NPS or FS on appropriate modifications, the Administrator shall be requested to assist in the further resolution of the matter.

9. If an application involves financial assistance or permit approval from another Federal Agency, the FmHA reviewer shall work with the other agency(s) to determine a lead Agency for the consultation process. When FmHA is not the lead Agency, the reviewer shall ensure that the lead Agency informs NPS or FS of FmHA's involvement.

10. Once completed, the consultation process shall be reinitiated by FmHA if new information or modification of the proposal reveals impacts to a river within the System or Nationwide Inventory.

EXHIBIT F—IMPLEMENTATION PROCEDURES FOR THE COASTAL BARRIER RESOURCES ACT

1. The Act applies to barrier islands that Congress has designated for inclusion in the Coastal Barrier Resources System. Since coastal barriers are only found in East and Gulf Coast States, no other State Offices fall under the requirements of the Act and, therefore, need be concerned with these implementation procedures.

2. On coastal barriers that are included in the system, the Act prohibits any new expenditures or new financial assistance by the Federal Government. There are some limited exceptions that are contained in Section 6 of the Act and listed in Exhibit L of this subpart. Consequently, all of the following actions must be reviewed by the environmental reviewer to determine if they would be located within the System: any application for financial assistance, any proposed direct expenditure of FmHA funds for construction or maintenance purposes, any request for subdivision approval, and any proposed disposal of real property that includes any form of financial assistance or subsidy to the purchaser. The boundaries of the system can be determined by reviewing a series of maps passed with the legislation and distributed by the Department of the Interior. Each State Director is responsible for ensuring that those field offices having components of the system within their jurisdictions are aware of the system's boundaries therein.

3. Exhibit L lists the six categories of exceptions, that is, those actions that may be taken within the system. No exception may be implemented, however, without first consulting with the Secretary of the Interior. It should also be noted that the sixth category is more limited than the first five. Besides meeting the consultation requirement for this sixth category, the sponsoring Agency must also determine whether the proposed exception is consistent with the purposes of the Act.

4. For those actions that are reviewed and determined not to be within the System, the environmental reviewer must document this result by checking the appropriate compliance blocks on either Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Form FmHA 1940-21, "Environmental Assessment for Class I actions," or by so stating this result in the environmental assessment for Class II Actions (Exhibit H), depending upon whichever format is applicable to the action under review.

5. For those actions that would be located within the system, one of the following two steps must be taken:

a. If the environmental reviewer concludes that the action does not meet the criteria for an exception, as listed in Exhibit L, the reviewer shall so inform the approving official and a final determination made in the manner indicated in § 1940.316 of this Subpart. If this determination is consistent with the environmental reviewer's conclusion, the action must be denied by the approving official and the affected applicant or party informed of the reason for denial. If it is determined that the action may qualify for an exception, the steps identified in Item b immediately below must be implemented prior to a decision on this question.

b. If the environmental reviewer concludes that the proposed action may meet the exception criteria, the approving official must be so informed. Whenever the approving official agrees or makes a similar determination as a result of the review conducted in Item a immediately above, consultation shall be initiated with the Secretary of the Interior by either the State Director or the Administrator for a National Office activity. FmHA shall request the Secretary's views as to whether the exception criteria are met and shall provide the Secretary with the following information:

(1) A detailed description of the action and its location;

(2) A description of the affected environment within the System and the impacts of the proposed action;

(3) The applicable exception criteria and FmHA's reasons for believing they apply to this action; and

(4) If a Section 6(a)(6) exception is claimed, FmHA's reasons for believing the action to be consistent with the purposes of the Act.

Should the Secretary concur in the exception criteria being met, that portion of the environmental assessment relating to compliance with the Act shall be completed and the corresponding documentation attached. Should the Secretary not concur, a final decision on the approval or denial of the action must be made by the Administrator.

EXHIBIT G--[RESERVED]

EXHIBIT H—ENVIRONMENTAL ASSESSMENT FOR CLASS II ACTIONS

In completing this assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project, its operation and maintenance, the operation of all identified primary beneficiaries, and the attainment of the project's major objectives, whether they be an increased housing stock, community improvement, economic development, or greater agricultural productivity. This last category, the attainment of the project's major objectives, often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The scope of the assessment is broadened even further when there are related activities involved. The impacts of these activities must also be assessed.

The preparer will consult as indicated in § 1940.318(b) of this subpart with appropriate experts from Federal, State, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact will be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The FmHA environmental assessment shall be prepared in the following format. It shall address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant, Form FmHA 1940-20, "Request for Environmental Information."

The assessment has been designed to cover the wide variety of projects and environments with which the Agency deals. Consequently, not every issue or potential impact raised in the assessment may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors, and issues which may be encountered. In preparing an assessment, each topic heading identified by a Roman numeral and each environmental factor listed under topic heading IV, such as air quality, for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located, and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

For example, a small community center may not require detailed information on air emissions or solid waste management, but an industrial facility would. Similarly, an irrigation project for a farming operation would concentrate on such factors as water quality and fish and wildlife, rather than land use changes. The extension of a water or sewer system or the approval of a subdivision, on the other hand, would have to give close attention to all factors, with potential land use changes being a particularly important one.

I. PROJECT DESCRIPTION AND NEED

Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA's position regarding the need for it, and the extent or area of land to be considered as the project site.

II. PRIMARY BENEFICIARIES AND RELATED ACTIVITIES

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project.

Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of a FmHA action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA action or are themselves induced or supported by the FmHA action or another related activity. These activities may have been completed in the very recent past and are now operational, or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be federally permitted or assisted. When they are, identify the involved Federal Agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

III. DESCRIPTION OF PROJECT AREA

Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute," if available,) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4), if completed, a standard soil survey for the project, and (5), if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

IV. ENVIRONMENTAL IMPACT

1. Air Quality. Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topographical and meterological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

2. Water Quality. Discuss, in terms of amounts and types of effluents, all aspects of the project including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evalute the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by EPA, contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 area-wide waste treatment management plan. Discuss the project's consistency with applicable State water quality standards to include a discussion of whether or not the project would either impair any such standard or fail to meet antidegradation requirements for point or nonpoint sources. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

3. Solid Waste Management. Indicate all aspects of the project including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy of these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

4. Land Use. Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to those unique or sensitive areas discussed under Section III, Description of Project Area, which are not covered by the specific analyses required in Sections V-XI. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts on these plans. For all actions subject to the requirements of Exhibit M of this subpart indicate (a) whether or not highly erodible land, wetland or converted wetland is present, (b) if any exemption(s) applies to the requirements of Exhibit M, (c) the status of the applicant's eligibility for an FmHA loan under Exhibit M and (d) any steps the applicant must take prior to loan approval to retain or retain its eligibility. Attach a completed copy of Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," for the action.

5. Transportation. Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

6. Natural Environment.—Indicate all aspects of the project including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

7. Human Population. Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc. will affect nearby residents and users of the project area and surrounding areas. Discuss whether the proposal will accommodate any population increases and, if so, describe the potential impacts of these increases on the area's public and community services such as schools, health care, social services, and fire protection. Cite contacts with appropriate experts.

8. Construction. Indicate the potential effects of construction of the project on air quality, water quality, noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

9. Energy Impacts. Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

10. Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire-prone locations, radiation, and aesthetic considerations. Cite any disucssion with appropriate experts.

V. COASTAL ZONE MANAGEMENT ACT*

Indicate if the project is within or will impact a coastal area defined as such by the State's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

VI. COMPLIANCE WITH ADVISORY COUNCIL ON HISTORIC PRESERVATION'S REGULATIONS

In this Section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

VII. COMPLIANCE WITH THE WILD AND SCENIC RIVERS ACT

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. See Exhibit E for specific implementation instructions for this Act. A summary of discussions held or any required formal coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

VIII. COMPLIANCE WITH THE ENDANGERED SPECIES ACT

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis will be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. Any formal or informal consultations conducted with these agencies as well as any State wildlife protection agency will also address impacts to Category I and Category II species. See Exhibit D of this subpart for specific implementation instructions.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

IX. COMPLIANCE WITH FARMLAND PROTECTION POLICY ACT AND DEPARTMENTAL REGULATION 9500-3, LAND USE POLICY

Indicate whether the project will either directly or indirectly convert an important land resource(s) identified in the Act or Departmental Regulation, other than floodplains or wetlands which should be addressed below in Item X of this exhibit. If a conversion may result, determine if there is a practicable alternative to avoiding it. If there is no such alternative, determine whether all practicable mitigation measures are included in the project. Document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See Exhibit C of this subpart for specific implementation guidance.

X. COMPLIANCE WITH EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT, AND EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resources Council's *Floodplain Management Guidelines* for more specific guidance as well as Exhibit C of this Subpart.

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* Complete only if coastal or Great Lakes State.

XI. COMPLIANCE WITH COASTAL BARRIER RESOURCES ACT

Indicate whether the project is located within the Coastal Barrier Resources System. If so, indicate whether or not the project meets an exception criteria under the Act and the results of any consultation with the Secretary of the Interior regarding its qualification as an exception. See Exhibit F of this subpart for specific implementation instructions as well as Exhibit L for a listing of the exception criteria. (Those States not having any components of the system within their jurisdiction need not reference this item in their assessments.)

XII. STATE ENVIRONMENTAL POLICY ACT

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation. (See § 1940.328 of this Subpart for further guidance.)

XIII. CONSULTATION REQUIREMENTS OF EXECUTIVE ORDER 12372, INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

Attach the comments of State, regional, or local agencies (if this review process is required for the project) and respond to all comments that deal with the subject matters discussed in this assessment format or are otherwise of an environmental nature.

XIV. ENVIRONMENTAL ANALYSIS OF PARTICIPATING FEDERAL AGENCY

Indicate if another Federal Agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved Agency's environmental impact analysis and attach available documentation. (See § 1940.318(d) of this Subpart for further guidance.)

XV. REACTION TO PROJECT

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

XVI. CUMULATIVE IMPACTS

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

XVII. ADVERSE IMPACT

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

XVIII. ALTERNATIVES

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative locations, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project. If alternatives have been fully discussed above in any of Items VI through X, simply reference that discussion.

XIX. MITIGATION MEASURES

Describe any measures which will be taken or required by FmHA to avoid or mitigate the identified adverse impacts. Analyze the environmental impacts and potential effectiveness of the mitigation measures. Such measures shall be included as special requirements or provisions to the offer of financial assistance or other appropriate approval document, if this action does not involve financial assistance.

XX. CONSISTENCY WITH FMHA ENVIRONMENTAL POLICIES

Discuss the project's consistencies and inconsistencies with the Agency's environmental policies and the State Office's Natural Resource Management Guide. See §§ 1940.304 and 1940.305 for a discussion of these policies and Exhibit B for a discussion of the guide.

XXI. ENVIRONMENTAL DETERMINATIONS

The following recommendations shall be completed:

a. Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project will have (#) a significant effect on the quality of the human environment and an Environmental Impact Statement must be prepared; will not have (#) a significant effect on the quality of the human environment.

b. I recommend that the approving official make the following compliance determinations for the below-listed environmental requirements.

Not in compliance	In compliance	
		Clean Air Act.
		Federal Water Pollution Control Act.
		Safe Drinking Water Act—Section 1424(e).
		Endangered Species Act.
		Coastal Barrier Resources Act.
		Coastal Zone Management Act—Section 307(c) (1) and (2).
		Wild and Scenic Rivers Act.
		National Historic Preservation Act.
		Archeological and Historic Preservation Act.
		Subpart B, Highly Erodible Land Conservation
		Subpart C, Wetland Conservation, of the Food Security Act.
		Executive Order 11988, Floodplain Management.
		Executive Order 11990, Protection of Wetlands.
		Farmland Protection Policy Act.
		Departmental Regulation 9500-3, Land Use Policy.
		State Office Natural Resource Management Guide.

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project

—— be approved.

—— not be approved because of the attached reasons.

Signature of preparer* ——————————

Date ——————————

Title ——————————

State Environmental Coordinator's Review (When required by § 1940.316 of this Subpart)

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do not concur, my reasons are attached as exhibit ——.

Do not concur	Concur	
		Adequate Assessment.
		Environmental Impact Determination.
		Compliance Determinations.
		Project Recommendation.

Signature of State Environmental Coordinator ——————————

Date ——————————

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT I

SUBJECT: Finding of No Significant Environmental Impact and Necessary Environmental Findings for (insert name, location, and any identification number of project).

TO: Project File.

The attached environmental assessment has been completed for the subject proposal by the FmHA environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

I also find that the assessment properly documents the proposal's status of compliance with the environmental laws and requirements listed therein.

Insert signature and title of approving official as specified in § 1940.316 of this subpart. ______(Date).

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT J

LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES

Federal region	Location	FTS No.*	Commercial No.
I	Boston, MA	223-4741	(617) 223-4741
II	New York, NY	264-8980	(212) 264-8980
III	Philadelphia, PA	597-9416	(215) 597-9416
IV	Atlanta, GA	257-2400	(404) 881-2400
V	Chicago, IL	353-1500	(312) 353-1500
VI	Dallas, TX	749-9201	(817) 387-5811

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*See § 1940.316 of this subpart for listing of officials responsible for preparing assessment.

LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES—Continued

Federal region	Location	FTS No.*	Commercial No
VII	Kansas City, MO	758-5912	(816) 374-5912
VIII	Denver, CO	234-2553	(303) 234-2553
IX	San Francisco, CA	556-8794	(415) 556-8794
X	Seattle, WA	396-0284	(206) 481-8800

*This is the main number for the regional office. For floodplain information, ask for the Natural and Technological Hazards Division.

EXHIBIT K—LOCATIONS AND TELEPHONE NUMBERS OF U.S. FISH AND WILDLIFE SERVICE'S WETLAND COORDINATORS

The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each regional office of the FWS has named a staff member as a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Listed below are the FWS regional offices and their areas of responsibility.

Region I

Portland, OR—FTS 429-6154; Commercial (503) 231-6154.

Areas Covered: California, Hawaii, Idaho, Nevada, Oregon, Washington, U.S. Pacific Trust, Territories and Possessions.

Region II

Albuquerque, NM—FTS 474-3152; Commercial (505) 766-2914.

Areas Covered: Arizona, New Mexico, Oklahoma, Texas.

Region III

Twin Cities, MN—FTS 725-3593; Commercial (612) 725-3593.

Areas Covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region IV

Atlanta, GA—FTS 242-6343; Commercial (404) 221-6343.

Areas Covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Panama Canal Zone, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

Region V

Newton Corner, MA—FTS 829-9379; Commercial (617) 965-5100, Ext. 379.

Areas Covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Region VI

Denver, CO—FTS 234-5586; Commercial (303) 234-5586.

Areas Covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

Alaska Area Office

Anchorage, AK—Commercial (907) 263-3403.

National Office

St. Petersburg, FL—FTS 826-3624; Commercial (813) 893-3624.

EXHIBIT L—EXCEPTIONS TO RESTRICTIONS OF COASTAL BARRIER RESOURCES ACT

*Section 6 Exceptions**

(a) Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for—

(1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body;

(2) The maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements;

(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(4) Military activities essential to national security;

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto; and

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

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*Quoted from section 6 of the Act, Pub. L. 97-348.

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1452 et seq.).

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

(b) For purposes of subsection (a)(2), a channel improvement or a related structure shall be treated as an existing improvement or an existing related structure only if all, or a portion, of the moneys for such improvement or structure was appropriated before the date of the enactment of this Act.

EXHIBIT M—IMPLEMENTATION PROCEDURES FOR THE CONSERVATION OF WETLANDS AND HIGHLY ERODIBLE LAND AFFECTING FARMER PROGRAM LOANS AND LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

1. *Background.* This exhibit implements the requirements of Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of Title XII of the Food Security Act of 1985, Pub. L. 99-198. The purposes of these Subtitles are to: Reduce soil loss due to wind and water erosion; protect the Nation's long term capability to produce food and fiber; reduce sedimentation; improve water quality; assist in preserving the Nation's wetlands; create better habitat for fish and wildlife through improved food and cover; and curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

2. *Applicability.* The provisions of this exhibit apply to insured and guaranteed Farmer Program loans and loans to Indian Tribes and Tribal Corporations, subordinations, transfers and assumptions of such loans and leases and credit sales of inventory property. For the purpose of this exhibit, "Farmer Program loans" means Farm Operating Loans, Farm Ownership Loans, Emergency Loans, and Soil and Water Loans. As used in this exhibit, the word loan is meant to include guarantee as well. Applicant means an applicant for either an insured or guaranteed loan and borrower means a recipient of either an insured or guaranteed loan.

3. *FmHA prohibited activities.* Unless otherwise exempted by the provisions of this exhibit, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA will not be used either (a) for a purpose that will contribute to excessive erosion of highly erodible land, or (b) for a purpose that will contribute to conversion of wetlands to produce an agricultural commodity. (See § 12.2(a)(1) of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for the definition of an agricultural commodity.) Consequently, any applicant proposing to use loan proceeds for an activity contributing to either such purpose, will not be eligible for the requested loan. Any borrower that uses loan proceeds in a manner that contributes to either such purpose will be in default on the loan.

a. *U.S. Department of Agriculture (USDA) definitions.* In implementing this exhibit, FmHA will use the USDA's definitions of the terms found at § 12.2 of Subpart A of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office).

b. *Highly erodible land conservation.* FmHA will conclude that excessive erosion of highly erodible land results or would result whenever (1) a field on which highly erodible land is predominant, as determined by the Soil Conservation Service (SCS), is or would be used to produce an agricultural commodity without conformance to a conservation system approved either by SCS or the appropriate conservation district, as evidenced by a statement from SCS, and (2) such field is not exempt from the provisions of this exhibit.

c. *Wetland conservation.* FmHA will conclude that a conversion of wetlands to produce an agricultural commodity has occurred or will occur whenever, as determined by SCS, (1) a wetland has or will be drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) that makes possible the production of an agricultural commodity without further application of the manipulations described herein if (a) such production would not have been possible but for such action and (b) before such action such land was wetland and was neither highly erodible land nor highly erodible cropland; and (2) neither the affected wetland nor the activity affecting the wetland is exempt from the provisions of this exhibit.

d. *Use of loan proceeds.* To use loan proceeds for a purpose that contributes to either the excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity means that loan proceeds will or have been used in a way that contributes to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

(1) The purchase of the affected land;

(2) Necessary planning, feasibility, or design studies;

(3) Obtaining any necessary permits;

(4) The purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs;

(5) Any labor costs;

(6) The planting, cultivating, harvesting, or marketing of any agricultural commodity produced on nonexempt highly erodible land to include any associated operational or material costs such as fuel, seed, fertilizer, and pesticide costs;

(7) Within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or materials costs such as fuel, seed, fertilizer and pesticide costs; or

(8) For the same time period as in subparagraph 3d(7) above, any costs associated with using for on-farm purposes an agricultural commodity grown on the affected land.

(9) Additionally, if loan proceeds will be or have been substituted to pay other costs at anytime during the life of the loan so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

4. *Prohibited activities under other USDA financial assistance programs.* Unless otherwise exempted, a person becomes ineligible for a variety of USDA financial assistance programs if that person produces in any crop year an agricultural commodity on either a field on which highly erodible land is predominant or a converted wetland. This ineligibility extends to any commodity produced during the crop year that the prohibited action occurs. The programs for which the person would be ineligible include price support payments, farm storage facility loans, disaster payments, crop insurance, payments made for the storage of an agricultural commodity, and payments received under a Conservation Reserve Program Contract. Farmer Program applicants and borrowers and applicants for, and borrowers of, loans to Indian Tribes and Tribal Corporations, therefore, can be affected not only by the FmHA prohibited activities but also by the broad USDA sweep of the Subtitles B and C restrictions. Should such an applicant rely or plan to rely on any of these other USDA financial assistance programs as a source of funds to repay its FmHA loan(s) and then fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, repayment ability to FmHA or the lender of and FmHA guaranteed loan may be jeopardized. Consequently, those applicants who are applying for a loan and those borrowers who receive a loan after the effective date of Subtitles B and C, as designated in Part 12 of Subtitle A of Title 7, and who include in their projected sources of repayment, potential funds from any USDA program subject to some form of Subtitle B or C restrictions will have to demonstrate as part of their applications, and for borrowers, as part of their farm plan of operation, their ability to meet the other program(s)' eligibility criteria. Failure to meet the criteria will require the applicant or borrower either to document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s). See paragraph 6 of this exhibit for a discussion of such steps.

5. *Applicant's responsibilities.*

a. *Required information.* Every applicant for a Farmer Program loan or a loan to an Indian Tribe or Tribal Corporation will be required to provide the following information and, as applicable, certification as part of the application for financial assistance. An application will not be considered to be complete until this information and certification are provided to FmHA. Once an applicant has provided FmHA with information from SCS on the presence of any highly erodible land, wetland, or converted wetland this information need not be provided again for a subsequent loan unless there is either a change in the property upon which FmHA loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption. There is a continuing responsibility on FmHA borrowers using other USDA financial assistance programs for repayment purposes to provide the County Supervisor with an executed copy of any similar certification required by the other USDA agency at the time of each required certification.

(1) A statement from the SCS indicating whether or not the applicant's farm property or properties contain either highly erodible land, wetland, or converted wetland and, if so, whether or not the applicant qualifies for a particular exemption to the provisions of this exhibit and as further detailed in paragraph 11 below. The property or properties will be listed and described in accordance with the Agriculture Stabilization and Conservation Service's (ASCS) farm records system. SCS's execution of Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," is necessary to meet this information requirement.

(2) If either highly erodible land, wetland, or converted wetland is present, the applicant's properly executed original or carbon copy of Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification."

b. *Required actions.* If at any time during the application review process any of the information or basis for an applicant's certification changes, the applicant (or the lender in the case of a guaranteed loan) must immediately notify FmHA. If an applicant intends to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, the applicant must develop a conservation system approved by SCS or the appropriate conservation district, demonstrate that it is or will be in compliance with the system at the time the field is to be used, and provide SCS's concurrence with this position.

6. *FmHA's application review.* The FmHA County Supervisor will review the information provided by the applicant from SCS regarding the presence of any highly erodible land, wetland, or converted wetland and any possible exemptions and take the actions warranted by the presence of one or more of the circumstances described below. In carrying out these actions, FmHA will consider the technical decisions rendered by the SCS and the ASCS, as assigned to these agencies by Subparts A, B, and C of Part 12 of Subtitle A of Title 7 and further explained in this exhibit, to be final and controlling in the remaining FmHA decisionmaking process for this exhibit. It must also be understood that the definition of a wetland used by SCS in implementing this exhibit applies only to this exhibit and not to other wetland protection provisions of Subpart G of Part 1940.

a. *No highly erodible land, wetland, or converted wetland present.* The requested loan can be approved under the provisions of this exhibit and, except for documenting this result in accordance with paragraph 8 of this exhibit, no further action is required.

b. *Converted wetland present.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the appropriate local office of the ASCS in order to determine if the converted wetland qualifies for the exemption specified in subparagraph c (1) of paragraph 11 of this exhibit. If so, no further action is necessary with respect to the converted wetland except for documenting the result. If the converted wetland does not qualify for an exemption, the County Supervisor will complete one or both of the following steps as the identified circumstances dictate.

(1) Step one. Review both the date that the wetland was converted and the proposed use of loan proceeds in order to determine if loan proceeds will be used for a prohibited activity as defined in subparagraph d of paragraph 3 of this exhibit. If not, the County Supervisor will so document this as specified in paragraph 8 of this exhibit; complete step two immediately below; and, if an insured loan will be approved, notify the applicant in writing, coincident with the transmittal of Form FmHA 1940-1, "Request For Obligation of Funds," and by using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's converted wetland. If loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of the applicant's ineligibility for the FmHA loan being requested. The applicant (and lender, in the case of a guaranteed loan) will be advised of any modifications to the application that could cure the ineligibility. Not growing an agricultural commodity on the converted wetland would cure the ineligibility, but the substitution of non-FmHA funds to grow an agricultural commodity on the converted wetland would not.

(2) Step two. The County Supervisor will review the applicant's sources of loan repayment to determine if they include funds from a USDA financial assistance program(s) subject to wetland conservation restrictions. If so, the County Supervisor will implement the actions in subparagraph e of this paragraph.

c. *Highly erodible land or wetland present.* The County Supervisor will discuss with the applicant (and lender, in the case of a guaranteed loan) and review the intended uses of the FmHA loan proceeds as evidenced in any relevant application materials.

(1) *Proceeds to be used for prohibited activity.* If proceeds would be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be ad-

vised of its ineligibility for the FmHA loan. The applicant (and lender, in the case of a guaranteed loan) will be informed of any modifications to its application that could cure the ineligibility, including financially feasible eligible loan purposes that could be helpful in implementing a conservation plan or installing a conservation system, should either be an appropriate cure. Substitution of non-FmHA monies to accomplish the prohibited activity would not cure the ineligibility, but actual elimination of the activity from the applicant's farm plan of operation would.

(2) *Proceeds not to be used for a prohibited activity.* If loan proceeds are not planned to be used for a prohibited activity, the County Supervisor will perform the following tasks:

(a) Document the above determination in the applicant's file as specified in paragraph 8 of this exhibit.

(b) If an insured loan will be approved and the requirements of subparagraph c (2)(c) of this paragraph do not apply, notify the applicant in writing, coincident with the transmittal of Form FmHA 1940-1, "Request For Obligation of Funds," and by using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land and/or wetland.

(c) Review the term of the proposed loan and take the following actions, as applicable.

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See § 12.23 of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayament ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA 1940-1, "Request For Obligation of Funds," and using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

(ii) *Loan term exceeds January 1, 1995.* If the term of the proposed loan would exceed this date and the borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of the exhibit up until that date (see subparagraph b (4) of paragraph 11 of this exhibit) the County Supervisor will determine if it is financially feasible for the applicant, after January 1, 1985, to produce an agricultural commodity on the highly erodible land in compliance with a conservation system approved by SCS or the appropriate conservation district. Prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation system and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of compliance with a conservation system using the financial projection method(s) indicated in subparagraph c (2)(c)(i) of this paragraph. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form 1940-1, "Request for Obligation of Funds," and using Form Letter 1940-G-1.

"Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to January 1, 1995, and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance.

(d) Implement the actions in subparagraph e of this paragraph if the applicant plans to repay a portion of the loan with funds from a USDA financial assistance program subject to wetland or highly erodible land conservation restrictions.

d. *Highly erodible land present that was or is planted in alfalfa.* If the applicant plans to cultivate highly erodible land for the purpose of producing an agricultural commodity and that highly erodible land during each of the 1981 to 1985 crop years was planted in alfalfa in a crop rotation determined by SCS to be adequate for the protection of highly erodible land, the applicant is exempt until June 1, 1988, from the requirement to fully implement an approved conservation system on the highly erodible land. The County Supervisor, following procedures similar to those indicated in subparagraph c (2)(c)(i) of this paragraph, will determine if it is financially feasible for the applicant to apply a conservation system to the highly erodible land prior to the loss of the exemption on June 1, 1988. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to June 1, 1988 and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance with this requirement.

e. *Highly erodible land, wetland, or converted wetland present and applicant intends to use the USDA financial assistance program(s), including crop insurance, to repay FmHA loan.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the other USDA agency(s) to determine if the applicant is eligible for the latter's financial assistance. If not eligible, the applicant will have to demonstrate that an alternative source(s) of repayment will be available in order for further processing of the application to proceed.

7. *Required provisions in loan approval documents.*

a. *Insured loans.*

(1) *Promissory Notes.* For all loans to which this exhibit applies, all promissory notes must contain the provision indicated below: (Form FmHA 1940-17, "Promissory Note," has been revised so that the language will no longer be inserted as an addendum, but the following provision must be inserted as an addendum to Form FmHA 440-22, "Promissory Note (Association or Organization)," if the loan is being made to an Indian Tribe or a Tribal Corporation.)

"Addendum for Highly Erodible Land and Wetland Conservation"

Addendum to promissory note dated __________ in the amount of $__________ at an annual interest rate of ____ percent. This agreement supplements and attaches to the above note.

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M. If (1) the term of the loan exceeds January 1, 1990, but not January 1, 1995, and (2) Borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of Exhibit M until either January 1, 1990 or two years after the U.S. Soil Conservation Service (SCS) has completed a soil survey for the Borrower's land, whichever is later, the Borrower further agrees that, prior to the loss of the exemption from the highly erodible land conservation restrictions found in 7 CFR Part 12, Borrower must demonstrate that Borrower is actively applying on that land which has been determined to be highly erodible a conservation plan approved by the SCS or the appropriate conservation district in accordance with SCS's requirements. Furthermore, if the term of the loan exceeds January 1, 1995, Borrower further agrees that Borrower must demonstrate prior to January 1, 1995, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with a conservation system approved by SCS or the appropriate conservation district in accordance with SCS's requirements.

____

(Name of Borrower)

____

(Signature of Executive Official)

____

(Signature of Attesting Official)

(2) *Mortgages, deeds of trust and security agreements.* State Directors will consult with the Office of General Counsel and ensure that for all loans to which this ex-

hibit applies a covenant is included in all mortgages, deeds of trust, and security agreements which reads as indicated below. Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)," and Form FmHA 440-4, "Security Agreement (Chattels and Crops)," have been revised accordingly. Equivalent forms required in State supplements must be similarly revised.

[For mortgages or deeds of trust:]

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

[For security agreements:]

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

b. *Guaranteed loans.*

(1) *Form FmHA 449-14, "Conditional Commitment for Guarantee," and Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)."* These forms must contain a condition that includes the following provisions:

(a) Informs the lender that FmHA's commitment is conditioned upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained in this exhibit;

(b) Informs the lender of the lender's monitoring responsibilities under paragraph 10 of this exhibit; and;

(c) Requires the lender, for all borrowers having highly erodible land, wetland, or converted on their farm properties, to include provisions in its loan instruments similar to those contained in subparagraphs a (1) and (2) of this paragraph.

(2) *Lender's loan and security instruments.* These instruments must be modified as specified in subparagraph b(1)(c) of this paragraph.

8. *Required FmHA documentation.* The actions taken and determinations made by FmHA to comply with the provisions of this exhibit will be documented as part of the environmental review of the application. All actions subject to this exhibit will undergo at a minimum the completion of Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions." On the reverse of this form, the preparer will document as applicable (a) whether or not highly erodible land, wetland, or converted wetland is present, (b) if any exemption(s) applies, (c) the status of the applicant's eligibility for an FmHA loan under this exhibit, and (d) any steps the applicant must take prior to loan approval to retain or regain its eligibility. If the application under review meets the definition of a Class I action as defined in § 1940.311 of this subpart, the above documentation will be included as an exhibit to Form FmHA 1940-21, "Environmental Assessment for Class I Action." If the application meets the definition of a Class II action as defined in § 1940.312 of this subpart, the required documentation will be included within the Class II assessment under the discussion of land use impacts. See paragraph IV.4. of Exhibit H of this subpart. Once an applicant's farm property has undergone an environmental review covering the provisions of this exhibit, the County Supervisor reviewing a subsequent loan request need not require the applicant to obtain further site information from SCS as long as there is no change in the farm property to be affected or any applicable exemptions.

9. *Borrowers' responsibilities.* In addition to complying with any loan requirements resulting from FmHA's implementation of this exhibit, a borrower must within ten days of receipt inform, in writing, the lender of a guaranteed loan and the County Supervisor for an insured loan of any ineligibility determinations received from other USDA agencies for violations of wetland or highly erodible land conservation restrictions. A borrower also has the responsibility to consult with the lender or County Supervisor, as applicable, if at any time the borrower is uncertain as to the borrower's duties and responsibility under the loan provisions.

10. *FmHA and lender monitoring.* As an element of insured loan servicing, to include development of a farm plan of operation for an upcoming crop year, scheduled farm visits, or other contracts with borrowers, FmHA staff will review and analyze the borrower's compliance with the provisions of this exhibit and any related loan requirements. If at anytime FmHA becomes aware of the borrower's violation of these provisions or related loan requirements, the borrower will be informed that the affected loan(s) is in default. In addition to directly monitoring borrowers, the County Supervisor will receive and review the monitoring results of other USDA agencies having restrictions on wetland and highly erodible land conservation. Whenever these results indicate that a borrower may have violated the loan conditions, the County Supervisor will further analyze the matter and respond, as indicated in this paragraph, should a violation be determined. Lenders of FmHA guaranteed loans must also monitor

compliance as part of their servicing responsibilities.

11. *Exemptions and determining their applicability.* Following is a list of exemptions from the provisions of this exhibit as well a description of how FmHA will apply the exemptions to a proposed loan or activity under a loan. This list is intended to provide guidance on implementing the exemptions contained in Subparts A, B, and C of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office) and does not modify or limit any of those exemptions.

a. *Exemption from wetland and highly erodible land conservation.* Any loan which was closed prior to December 23, 1985, or any loan for which either Form FmHA 1940-1, "Request for Obligation of Funds," Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," was executed prior to December 23, 1985, is exempt from the provisions of this exhibit.

b. *Exemptions from highly erodible land conservation.* The following exemptions exist from the restrictions on highly erodible land conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) Any land upon which an agricultural commodity was planted before December 23, 1985, is exempt for that particular planting. The County Supervisor will consult with the appropriate local ASCS office in applying this exemption and the ASCS determination is controlling for purposes of this exhibit.

(2) Any land planted with an agricultural commodity during a crop year beginning before December 23, 1985, is exempt for that particular planting. FmHA will consult with the ASCS State Executive Director and the latter's position will be controlling in determining the date that the crop year began.

(3) Any land that during any one of the crop years of 1981 through 1985 was either (a) cultivated to produce an agricultural commodity, or (b) set aside, diverted or otherwise not cropped under a program administered by USDA to reduce production of an agricultural commodity, is exempt until the later of January 1, 1990, or the date that is two years after the date that the SCS has completed a soil survey of the land. To apply this exemption, the County Supervisor will consult with ASCS to determine from the latter's records whether or not the land was cultivated or set aside during the required period. The ASCS determination will be controlling. However, the date of completion for any SCS soil survey will be determined by SCS and used by the County Supervisor.

(4) Beginning on January 1, 1990, or two years after SCS has completed a soil survey for the land, whichever is later, and extending to January 1, 1995, any land that qualified for the exemption in subparagraph b (3) of this paragraph is further exempt if a person is actively applying to it a conservation plan that is based on the local SCS technical guide and properly approved by the appropriate SCS conservation district or the SCS. To apply this exemption as well as the exemptions specified in subparagraphs b (5), (6), (7), and (8) of this paragraph, the County Supervisor will consult with the appropriate local SCS office and the SCS position will be controlling.

(5) Highly erodible land within a conservation district and under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district is exempt.

(6) Highly erodible land not within a conservation district but under a conservation system determined by SCS to be adequate for the production of a specific agricultural commodity or commodities on any highly erodible land is exempt for the production of that commodity or commodities.

(7) Highly erodible land that is planted in reliance on a SCS determination that such land was not highly erodible is exempt. The exemption is lost, however, for any agricultural commodity planted after SCS determines that such land is highly erodible land.

(8) Highly erodible land planted or to be planted in an agricultural commodity that was planted in alfalfa during each of the 1981 and 1985 crop years in a crop rotation determined by SCS to be adequate for the protection of highly erodible land is exempt until June 1, 1988, from the requirement that the highly erodible land be planted in compliance with an approved conservation system.

c. *Exemptions from wetland conservation.* The following exemptions exist from the restrictions on wetland conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) A converted wetland is exempt if the conversion of such wetland was completed or commenced before December 23, 1985.

The County Supervisor will consult with ASCS whose determination as to when conversion of a wetland commenced will be final for FmHA purposes. Additionally, the County Supervisor will request evidence of ASCS's consultation with the U.S. Fish and Wildlife Service on each commenced determination reached for an FmHA applicant or borrower. SCS will determine if a wetland is a converted wetland using the criteria contained in § 12.32 of Subpart C of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office). Under these criteria, however, a converted wetland determined to be exempt may not always remain exempt. The criteria include the provision that if crop production is abandoned on a converted wetland and the land again meets the wetland criteria, that land has reverted to a wetland and is no longer exempt. For purposes of FmHA inventory farm properties, crop production will be considered to have been abandoned on a converted wetland either at the earlier of the time the former owner so abandoned crop production or at the time FmHA caused crop production to be abandoned after the property came into FmHA's inventory. While in its inventory FmHA will not lease the converted wetland for the purpose of producing an agricultural commodity. Whether or not the wetland criteria are met on the abandoned land will be determined by SCS immediately before FmHA's lease or sale of the property.

(2) The following are not considered to be a wetland under the provisions of this exhibit: (a) An artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, colling, rice production, or flood control; (b) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation and (c) lands in Alaska identified by SCS as having a predominance of permafrost soils. The County Supervisor will consult with SCS regarding the application of this exemption as well as the remaining exemptions in this paragraph and the SCS position will be controlling.

(3) A wetland is exempt if the production of an agricultural commodity is possible (a) as a result of a natural condition, such as drought, and (b) without action by the producer that destroys a natural wetland characteristic. This exemption is lost whenever condition (a) or (b) no longer exists.

(4) Production of an agricultural commodity on a converted wetland is exempt is SCS determines that the effect of such action, individually and in connection with all other similar actions authorized in the area by USDA agencies, on the hydrological and biological aspect of wetland is minimal.

12. *Appeals.* Any applicant or borrower that is directly and adversely affected by an administrative decision made by FmHA under this exhibit may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter (see especially § 1900.55).

13. *Working with other USDA agencies.*

a. *Coordination.* FmHA State Directors will consult with SCS State Conservationists and ASCS State Executive Directors to assess and coordinate loan processing workloads in order to minimize delays in responding to FmHA requests for site information or for the application of the exemptions contained in paragraph 11 of this exhibit. State Directors will ensure that FmHA field staff understand and can use the ASCS farm records system and will request ASCS training as needed. Also, management systems for sharing the information discussed in subparagraph b of this paragraph will be established.

b. *Information exchange.* FmHA State Directors will develop with ASCS State Executive Directors a system for FmHA to routinely receive notification whenever a violation has occurred under ASCS's wetland and highly erodible land conservation restrictions. FmHA State Directors will in turn provide to any interested USDA agency the following information.

(1) Upon request, copies of site information or exemption decision made by SCS for FmHA application reviews;

(2) Upon request, copies of exemption decisions made by FmHA; and

(3) Notice of any violations of the provisions of this exhibit identified by FmHA as a result of the monitoring activities identified in paragraph 10 of this exhibit.

14. *Relationship of the requirements of this exhibit to the wetland protection requirements of Exhibit C of this subpart.* The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan or a loan to an Indian Tribe or Tribal Corporation is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in Exhibit C of this subpart regarding wetland protection cover all FmHA loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, those applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of Exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from

this exhibit (M) because trees are not an agricultural commodity, i.e., there is no conversion in order to produce an agricultural commodity. However, before FmHA could make the loan, the requirements of Exhibit C of this subpart would have to be met to include an FmHA finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of Exhibit C of this subpart before FmHA approval of the requested financial assistance could be provided.

[53 FR 7333, Mar. 8, 1988, as amended at 53 FR 14778, April 26, 1988]

Subpart H—[Reserved]

Subpart I—Truth in Lending—Real Estate Settlement Procedures

SOURCE: 48 FR 4, Jan. 3, 1983, unless otherwise noted.

§ 1940.401 Truth in Lending.

(a) *General.* This section provides instructions for compliance with the Truth in Lending Act, as implemented by Regulation Z of the Federal Reserve System, to assure that individual Rural Housing (RH) applicants are informed of:

(1) The cost and terms of credit, and

(2) Their right to cancel certain credit transactions resulting in a lien or mortgage on their home.

(b) *Scope.* This section applies to all individuals who apply for loans, assumptions, or credit sales (hereafter described as transactions) for household purposes.

(1) Special rules for the right to cancel transactions not for purchase, acquisition or initial construction of a home broaden the scope of this section to include individuals who have an ownership interest in, and reside in as a principal dwelling, property which will be security for a mortgage, even though they may not execute the promissory note or assumption agreement. Such persons have the right to receive credit disclosures and the notice of the right to cancel and may cancel the transaction.

(2) This section does *not* apply to:

(i) Applicants who are corporations, associations, cooperatives, public bodies, partnerships, or other organizations;

(ii) Individual applicants for multiple family housing transactions (rural rental or labor housing), unless for a two-family dwelling in which the applicants will reside, and other business and commercial type loans; or

(iii) Applicants involved in credit transactions primarily for agricultural purposes.

(c) *Disclosure of the cost and terms of credit*—(1) *Form and content.* Form FmHA 1940-41, "Truth in Lending Disclosure Statement," will be used to provide the following required disclosures:

(i) Annual percentage rate;

(ii) Finance charge;

(iii) Amount financed;

(iv) Total of payments;

(v) Total sale price (required for credit sales only);

(vi) Payment schedule;

(vii) A separate itemization of the amount financed, if the applicant requests it. Normally this required disclosure will have been met in transactions subject to the Real Estate Settlement Procedures Act (RESPA) by providing the applicant with Form FmHA 440-58, "Estimate of Settlement Costs";

(viii) The lender's identity;

(ix) Prepayment or late payment penalties;

(x) Security interest;

(xi) Insurance requirements;

(xii) Assumption policy; and

(xiii) Referral to other loan documents.

(2) *Timing, use of estimates and required redisclosure.* (i) In transactions for the purchase or construction of a home subject to RESPA, Form FmHA 1940-41, completed using "good faith" estimates based on the best information available, will be delivered or placed in the mail to the applicant no later than three (3) business days after receipt of a written application in the County Office.

(ii) In transactions *not* subject to RESPA, such as RH Section 502 transactions for repairs or refinancing or RH Section 504 transactions, Form FmHA 1940-41, completed using the actual terms of the transaction, will be delivered to each applicant (and in transactions which are subject to cancellation, each non-applicant with the right to cancel) at the time of loan approval.

(iii) In the event of a change in rates and terms between the time of initial disclosure and closing, whereby the annual percentage rate varies by more than one-eighth of one percent, redisclosure must be made. This may be done by entering the changes on all copies of the initial Form FmHA 1940-41, or by preparing a new Form FmHA 1940-41. When required, redisclosure may be made at the time the transaction is approved or at the time of the change, but the form must be delivered to the applicant before the signing of the promissory note or assumption agreement.

(3) *Special instructions for assumption, reamortization, refinancing and multiple transactions.* (i) Assumptions, within the scope of paragraph (b) of this section, at new rates and terms or of existing obligations which were for purchase, acquisition or initial construction of a residence, require new credit disclosure before the assumption occurs. Since assumptions are not subject to RESPA, early disclosure is not required.

(ii) Reamortization, as described in § 1944.37(g) of Subpart A of Part 1944 and § 1951.314 of Subpart G of Part 1951 of this chapter, when the borrower is in default or delinquent, does not require new credit disclosure. In all other cases reamortization requires new credit disclosure.

(iii) Refinancing of debts in accordance with § 1944.22 of Subpart A of Part 1944 of this chapter, though not subject to RESPA or early disclosure, does require credit disclosure at the time the transaction is approved.

(iv) Multiple transactions.

(A) When a subsequent loan is financed along with another transaction and both transactions require credit disclosure, a separate Form FmHA 1940-41 will be prepared for each transaction.

(B) Transactions with multiple advances will be treated as one transaction for the purpose of credit disclosure, in accordance with the Forms Manual Insert (FMI) for Form FmHA 1940-41.

(d) *Notice of the right to cancel.* The right to cancel applies only to transactions within the scope of paragraph (b) of this section, which are *not* for purchase, acquisition or initial construction of *and* which result in a mortgage on an individual's principal residence, such as RH Section 502 transactions for refinancing, repairs or rehabilitation or RH Section 504 transactions.

(1) *Form and Content.* Form FmHA 1940-43, "Notice of Right to Cancel", will be used to notify individuals of their right to cancel those transactions, within the scope of paragraphs (b) and (d) of this section, which result in a mortgage on their principal residence *except* when the transaction is for its purchase or initial construction. This notice will identify the transaction and disclose the following:

(i) The acquisition of a security interest in the individual's principal residence.

(ii) The individual's right to cancel the transaction.

(iii) How to exercise the right to cancel the transaction, with a form for that purpose.

(iv) The effects of cancellation.

(v) The date the cancellation period expires.

(2) *Timing.* (i) Two copies of Form FmHA 1940-43, and one copy of Form FmHA 1940-41, in accordance with the FMI's, will be given to each individual entitled to cancel, not later than loan closing.

(ii) Any entitled individual may cancel the transaction until midnight of the third business day following whichever of the following events occurs last:

(A) The date the transaction is closed.

(B) The date Truth in Lending credit disclosures were made.

(C) The date notice of the right to cancel was received.

(3) *Disbursement of funds.* In a transaction subject to cancellation funds will not be disbursed, other than to a designated attorney or title insurance company preparatory to closing until:

(i) Forms FmHA 1940-43 have been given to the appropriate individuals.

(ii) The three-day cancellation period has expired, and

(iii) The loan approval official is reasonably assured that the transaction has not been cancelled. This assurance may be obtained by:

(A) Waiting a reasonable period of time after the expiration of the cancellation period to allow for the delivery of a mailed notice, or

(B) Obtaining a written statement from each individual entitled to cancel that the right has not been exercised.

(iv) This delay in disbursing funds may be waived in cases of a bonafide personal financial emergency, which must be met within the cancellation period, when the individual submits a signed and dated statement describing the nature of the emergency and waiving the right to cancel. Such a statement must be signed by all individuals entitled to cancel.

(4) *Effects of cancellation.* (i) When an individual cancels a transaction, the mortgage securing the transaction becomes void and the borrower will not be liable for any amount, including any finance charge.

(ii) Within twenty (20) calendar days after receipt of a notice of cancellation the loan approval official will:

(A) Notify all interested parties of the cancellation;

(B) Return, and/or request the return of any money or property given to anyone in connection with the transaction; and

(C) Take the necessary action to terminate the mortgage.

(iii) Once evidence has been presented to the borrower that the mortgage has been terminated, the borrower must return any funds advanced by FmHA to the FmHA County Office or surrender any property at his/her residence within twenty (20) calendar days.

(e) *Advertisements.* An "advertisement" is defined as a commercial message in any medium that promotes, directly or indirectly, a credit transaction. Advertisements for credit sales of Government inventory property, within the scope of pararaph (b) of this section, are subject to the following requirements.

(1) If an advertisement states specific credit terms, it shall state only those terms that actually are or will be arranged or offered.

(2) If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term.

(3) Terms requiring additional disclosures.

(i) If any of the following terms is set forth in an advertisement:

(A) The amount or percentage of any down payment,

(B) The number of payments or period of repayment,

(C) The amount of any payment, or

(D) The amount of any finance charge,

(ii) The advertisement must also state:

(A) The amount or percentage of down payment,

(B) The terms of repayment, and

(C) The "annual percentage rate," using that term.

§§ 1940.402—1940.405 [Reserved]

§ 1940.406 Real estate settlement procedures.

(a) *General.* This section provides the instructions for compliance with the Real Estate Settlement Procedures Act (RESPA), as amended, and Regulation X of the Department of Housing and Urban Development.

(b) *Scope.* (1) This section applies to loans and credit sales, including Section 502 Rural Housing, 1-4 family Rural Rental Housing, 1-4 family Labor Housing, and Farm Ownership involving tracts of less than 25 acres, whether made to an individual, corporation, partnership, association or other entity, which meet the following requirements:

(i) The proceeds of the loan or the credit extended are used in whole or in part to finance the purchase and transfer of title of the property to be mortgaged by the borrower, and

(ii) The loan or credit sale is secured by a first lien covering real estate on which is located a structure designed principally for the occupancy of from 1-4 families, or on which a structure designed principally for the occupancy of from 1-4 families is to be constructed using proceeds of the loan.

(2) Exempt transactions include:

(i) Loans for repairs, improvements, or refinancing if the proceeds are not used to finance the purchase of the property.

(ii) Loans to finance the construction of a 1-4 family structure if the tract of land is already owned by the applicant/borrower.

(iii) Assumptions or transfers.

(c) *Action required.* (1) The information booklet entitled "Settlement Costs" will either be given to the applicant at the time the completed application is received, or mailed to the applicant no later than three (3) business days after receipt of the application in the County Office.

(i) Form FmHA 440-58, "Estimate of Settlement Costs," is to be used to provide a "good faith" statement of estimated closing costs. Form FmHA 440-58 will be completed by the County Supervisor and mailed or delivered to the applicant with the Settlement Costs booklet. Costs will vary between geographic areas; therefore, information supplied on this form must be based upon (A) the County Supervisor's best estimate of charges the borrower will pay for each service in connection with the transaction, or (B) a range of charges at which such service is available to the borrower from all providers in the area.

(ii) Form FmHA 440-58 does not replace Truth in Lending forms. Appropriate forms listed in § 1940.401 will be used for Truth in Lending purposes.

(2) Form FmHA 1940-59, "Settlement Statement," will be completed as indicated in the form and FMI by the designated attorney or title company for all transactions described in paragraph (b) of this section. The purpose of this form is to provide a uniform settlement statement prescribed by RESPA.

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by the applicant, must permit the applicant to inspect the settlement statement, completed for those items which are then known to the closing agent.

(ii) A copy will be given to both the borrower and seller at the time of closing or settlement or will be mailed as soon as practicable if the borrower or seller are not present at closing.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

SOURCE: 50 FR 24180, June 10, 1985, unless otherwise noted.

§ 1940.551 Purpose and general policy.

(a) The purpose of this subpart is to set forth the methodology and formulas by which the Administrator of the Farmers Home Administration (FmHA) allocates program funds to the States. (The term "State" means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Areas.)

(b) The formulas in this subpart are used to allocate program loan and grant funds to State Offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program resources are available on an equal basis to all eligible individuals and organizations.

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any FmHA State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State. That portion of the exhibit which deals with the Rural Housing Programs will be published in the FEDERAL REGISTER.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988; 55 FR 29560, July 20, 1990]

§ 1940.552 Definitions.

(a) *Amount available for allocation.* Funds appropriated or otherwise made availiable to the Agency for use in authorized programs. On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

(b) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic state factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State Factor (SF). The data sources used for each criteria is believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(c) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

BFA = (Amount available for allocation − NO reserve − Total base and administrative allocations) × SF.

(d) *Transition formula.* A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or − percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Maximum } 20\%}{100} \times \frac{\text{Amount available for allocation this year}}{\text{Amount available for allocation previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not exceed 40% (±20%), but when a smaller range is used it will be stated in the individual program section.

(e) *Base allocation.* An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each FmHA State, District, or County Office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as agency historic data.

(f) *Administrative allocations.* Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program objectives cannot be adequately met with a formula allocation.

(g) *Reserve.* An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it determined necessary to meet a program need or agency objective. The Administrator may retain additional amounts to fund authorized demonstration programs. When such demonstration programs exist, the information is outlined in Exhibit A of this subpart (available in any FmFA State Office).

(h) *Pooling of funds.* A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligatedf by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(1) *Mid-year:* This pooling addresses the need to partially redistribute funds based on use/demand. Mid-year pooling occurs near the midpoint of the fiscal year.

(2) *Year-end:* This pooling is used to ensure maximum use of program funds on a national basis. Year-end pooling usually occurs near the first of August.

(3) *Emergency:* The Administrator may pool funds at any time that it is determined the conditions upon which the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(i) *Availability of the allocation.* Program funds are made available to the Agency on a quarterly basis. In the high demand programs, it is necessary that specific instructions by given to the State Offices regarding the amount which is available for obligation during each quarter.

(j) *Suballocation by the State Director.* Dependent upon the individual program for which funds are being allocated, the State Director may be directed or given the option of suballocating the State allocation to District or County Offices. When suballocating the State Director may retain a portion of the funds in a State Office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(k) *Other documentation.* Additional instructions given to field offices regarding allocations.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§§ 1940.553—1940.554 [Reserved]

§ 1940.555 Insured Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15% This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=STATE FACTOR where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Subobligation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.556 Guaranteed Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

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The basic allocation formula is a two-step process. In step one, each criterion is converted to the State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=State Factor Where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other Documentation.* See § 1940.552(k) of this subpart.

§ 1940.557 Insured Farm Ownership loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D=Three-year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence of the allocation.

(5) E=Value of farm real estate assets. Source: USDA Economic Research Service. 10%. The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The transition range is plus or minus 15%.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart.

(i) *Availability of the allocation.* A portion of the allocation will be targeted to the State's rural socially disadvantaged population. The amount of the targeted funds for each state is equal to the State's rural socially disadvantaged population divided by the State's total rural population multiplied by the State's total fiscal year Insured Farm Ownership allocation. Source of data is U.S. Census 1980.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§ 1940.558 Guaranteed Farm Ownership loan funds.

(a) *Amount available for allocation.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A = Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B = Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C = Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D = Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E = Value of farm real estate assets. Source: USDA Economic Research Service. 10%

The basic allocation formula is a two step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor $Aa + Bb + Cc + Dd + Ee = \text{State Factor}$ where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations:* See Section 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not have administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.559 Farmer Programs and Indian Land Acquisition appropriations not allocated by State.

(a) *Emergency Disaster.* State allocations are not made since it is impossible to predict occurrences. Obligating documents may be submitted to the Finance Office as loans are approved in designated areas. This type loan is available only in areas designated as disaster areas. Designations may be by a single county, multiple of counties or areas, depending upon scope and severity.

(b) *Soil and Water.* Funds are not allocated to States. Program size does not permit equitable distribution. Obligation of funds are on a first-come, first-served basis, subject to availability.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§§ 1940.560—1940.564 [Reserved]

§ 1940.565 Section 502 subsidized Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population,

(3) State's percentage of the National rural population in places of less than 2,500 population,

(4) State's percentage of the National number of rural households between 50 and 80 percent of the area median income, and

(5) State's percentage of the National number of rural households below 50 percent of the area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF)

SF=

(criterion 1 x weight of 25%)+
(criterion 2 x weight of 10%)+
(criterion 3 x weight of 15%)+
(criterion 4 x weight of 30%)+
(criterion 5 x weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 subsidized RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565 (b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing delinquency).

(k) *Other documentation.* The percentage distribution of funds to the States by income levels is based on prevailing legislation.

§ 1940.566 Section 504 Housing Repair loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b).

The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units, and

(2) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF=

(criterion No. 1 × weight of 50%)+
(criterion No. 2 × weight of 50%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair Loans is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.567 Section 504 Housing Repair grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population 62 years and older, and

(3) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF=

(criterion No. 1 × weight of 33⅓%)+
(criterion No. 2 × weight of 33⅓%)+
(criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair grants is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and

are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.568 Single Family Housing programs appropriations not allocated by State.

The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 523 Self-Help Technical Assistance Grants.

(b) Section 523 Land Development Fund.

(c) Section 524 Rural Housing Site Loans.

(d) Section 509 Compensation for Construction Defects.

(e) Section 502 Nonsubsidized Funds.

§ 1940.569—1940.574 [Reserved]

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula area:

(1) State's percentage of National rural population,

(2) State's percentage of National number of rural occupied substandard units, and

(3) State's percentage of National rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

SF = (criterion No. 1 × weight of $33\frac{1}{3}\%$) + (criterion No. 2 × weight of $33\frac{1}{3}\%$) + (criterion No. 3 × weight of $33\frac{1}{3}\%$)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.522(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

§ 1940.576 Rental Assistance (RA) for new construction.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

§ 1940.577 Rental Assistance (RA) for existing projects.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart. RA appropriated for existing projects will first be used to replace contracts expiring each fiscal year and for the first few months of the following fiscal year. This is done to assure continued RA funding. RA units not needed for replacement purposes will be used for existing multiple family housing projects experiencing servicing problems.

(b) *Basic formula criteria, data source and weight.* No formula or weighted criteria is used to allocate replacement RA. The basic allocation for replacement RA will be made based on the following:

(1) *Criteria.* This allocation is based on the estimated need to replace RA contracts expiring from the depletion of funds.

(2) *Date source.* The most accurate and current information available from FmHA computerized data sources.

(c) *Basic formula allocation.* While no formula will be used, the basic allocation will be made to each State according to the need determined using the basic criteria.

(d) *Transition formula.* Not applicable.

(e) *Base allocation.* Not applicable.

(f) *Administrative allocation.* Not applicable.

(g) *Reserve.* See § 1940.552(g) of this subpart. The National Office maintains a reserve adequate to compensate for the differences between actual and projected replacement activity. Units will be administratively distributed for existing housing to either satisfy previously unidentified replacement needs or address servicing situations. Units will be distributed to any State when the Administrator determines that additional allocations are necessary and appropriate.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Units will be pooled at the Administrator's discretion.

(i) *Obligation of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§ 1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the Section 504 program.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA will review and evaluate the proposals, adjust State allocations as necessary to comply with the law and program demand, and redistribute remaining unused HPG resources for use under Section 504 (as required by statute).

[53 FR 26229, July 12, 1988]

§ 1940.579 Multiple-Family Housing appropriations not allocated by State.

(a) *Section 514 Farm Labor Housing loans.* Funds are not allocated to States because of the small program size. Projects are funded on a first-come, first-served basis.

(b) *Section 516 Farm Labor Housing Grants.* Funds are not allocated to States because of the small program size. State Directors must obtain authorization from the National Office before permitting development of a full applications. Projects are funded on a first-come, first-served basis.

§§ 1940.580—1940.584 [Reserved]

§ 1940.585 Community Facility loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.

(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1×50 percent)+
(criterion No. 2×50 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (±15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this chapter (available in any FmHA office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.586 Water and Waste Disposal loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.

(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 x .5) +
(criterion No. 2 x .5)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (± 15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula and base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. Any State may request reserve funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this Chapter (available in any office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552 (j) of this subpart. The State Director has the option to suballocate funds to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.587 Water and Waste Disposal grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.
(2) State's percentage of National rural population with incomes below the poverty level—50 percent

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 x .5) +
(criterion No. 2 x .5)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent. (± 15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula and base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. Any State may request reserve funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this Chapter (available in any office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the grant requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director has the option to suballocate funds to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.588 Business and Industrial guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

	Weight (percent)
(1) State's percentage of National rural population	33.3
(2) State's percentage of National nonmetropolitan unemployment, and	33.4
(3) State's percentage of National rural population with incomes below poverty level	33.3

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=

(Criterion No. 1 x weight No. 1)+
(Criterion No. 2 x weight No. 2)+
(Criterion No. 3 x weight No. 3)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30% (±15%).

(e) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. A National reserve of approximately 10 percent of the program amount has been established for the B&I program. States may request reserve funds from the B&I reserve when all of the State's allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. There is a 6-day waiting period from the time project funds are reserved to the time they are obligated.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Not applicable.

§ 1940.589 Industrial Development Grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National Nonmetro population—50 percent.

(2) State's inverse percentage of nonmetro per capita income—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multipled by the weight factor and summed to arrive at a State factor (SF).

$$SF = \left(\frac{\text{Criterion \#1}}{\text{Sum of criterion \#1}} \right) \times .5 + \left(\frac{\text{1/criterion \#2}}{\text{Sum of 1/criterion \#2}} \right) \times .5$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocation.* Not used.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by written request to the Director, Community Facilities Loan Division. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate from the State's allocation.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions funds to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[53 FR 26230, July 12, 1988]

§ 1940.590 Community and Business programs appropriations not allocated by State.

(a) *Watershed Protection Loans, Resource Conservation and Development Loans, and Flood Protection Loans.* State allocations will not be made for these type loans. Instead, obligating documents may be submitted to the Finance Office when a loan is approved. Only States that are authorized to process Pub. L. 534 loans may submit obligating documents to the Finance Office for that type loan. Resource Conservation and Development (RC&D) Loan funds will be used in preference to Community Facility loan funds in designated RC&D areas for loan purposes included in Subpart A of Part 1942 of this chapter.

(b) *Indian Land Acquisition.* Control of funds will be retained in the National Office and allocated on an individual case basis. Requests for funds will be made to the Director, Community Facilities Division, when it is determined the loan can be approved.

(c) *Nonprofit National Corporation Guaranteed Loans and Grants.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(d) *Intermediary Relending Program.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(e) *Technical Assistance and Training Grants.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(f) *Emergency Community Water Assistance Grants.* Control of funds will be retained in the National Office and allocated on an project case basis. Requests for funds will be made to the Director, Water and Waste Disposal Division.

[53 FR 26230, July 12, 1988, as amended at 55 FR 12811, April 6, 1990]

§ 1940.591 Community Program Guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.

(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

$$\text{SF} = \text{(criterion No. 1} \times \text{50 percent)} + \text{(criterion No. 2} \times \text{50 percent)}$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Program Guaranteed loans is not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.522(g) of this subpart. States may request funds by forwarding a request following the format found in Guide 26 of subpart A of part 1942 of this chapter (available in any FmHA office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds from the State's allocation to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[55 FR 11134, Mar. 27, 1990]

§§ 1940.592—1940.600 [Reserved]

EXHIBIT TO SUBPART L

EXHIBIT B—SECTION 515 NONPROFIT SET ASIDE (NPSA)

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize Section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990, requires that FmHA set aside 7 percent of FY 91 and 9 percent of FY 92 funds for use by certain nonprofit entities.

III. *Eligible nonprofit entities.* Notwithstanding the definition of "Nonprofit" in subpart E of part 1944 of this chapter, to receive funds from this set aside, the applicant must be a nonprofit entity which meets the following conditions:

A. Is a private nonprofit organization, consumer cooperative or Indian Tribe;

B. Whose principle purposes include the planning, development and management of low-income housing;

C. Is exempt from federal income taxes under section 501(c)(3) and 501(c)(4) of the Internal Revenue Code;

D. Is not wholly or partially owned or controlled with/by a "for profit" entity;

E. Is not a public body, housing authority, limited partnership, limited partnership with a nonprofit general partner; and

F. Is not co-venturing with a "for profit" entity eligible for section 515 assistance.

IV. *Amount of set aside.* Seven percent in FY 91 and nine percent in FY 92 of each States section 515 allocation has been set aside for nonprofit applicants defined in paragraph III. Rental Assistance (RA) has also been set aside in the National Office reserve for use with set aside funds.

V. *Location of set aside.* All set aside funds and RA have been reserved in the National Office as follows:

A. *Small State Allocation Set Aside (SSASA):* In all States where 7 percent of the State's FY 91 allocation is less than $750,000, 7 percent of the State's allocation has been reserved and combined to form the SSASA. In FY 92, the percentage is increased from 7 percent to 9 percent.

B. *Large State Allocation Set Aside (LSASA):* In all States where 7 percent of the State's allocation is more than $750,000, 7 percent of the State's allocation has been reserved and combined to form the LSASA. In FY 92, the percentage is increased from 7 percent to 9 percent.

C. *Nonprofit RA Set Aside:* 700 units of RA in FY 91 and 900 units in FY 92 have been reserved in the National Office for use with SSASA and LSASA funds.

VI. *Access to funds and RA:* RA is available and may be requested, as needed, with eligible loan requests. Funds and RA should be requested on Attachment 1 of this exhibit (available in any FmHA State Office.) Funds are available as follows:

A. *SSASA:* The following conditions apply:

1. The SSASA is available to any SSASA state on a first-come first-served basis until COB June 14, 1991.

2. On June 17, 1991, all unused SSASA funds will be pooled and made available to any SSASA state on a first-come first-served basis until COB July 12, 1991.

3. Unused funds, as of COB July 12, 1991, will be returned to States which did not utilize the full amount of set aside funds they contributed. The amount of funds returned to a State will be proportionate to the amount it contributed. States may utilize those funds for Section 515 proposals ready for obligation without regard to applicant entity.

B. *LSASA*: The following conditions apply:

1. States may request LSASA funds, up to the amount the State contributed to the LSASA until COB July 12, 1991.

2. Unused funds will be returned to each State as of COB July 12, 1991. States may utilize those funds for section 515 proposals ready for obligation without regard to applicant entity.

VII. *Priority/Processing of Preapplications:* Preapplications/applications for assistance from eligible nonprofits must continue to meet all loan making requirements of subpart E of part 1944 of this chapter. The State Director may issue AD-622s requesting a formal application to the highest ranking preapplication(s) from nonprofit entities defined in paragraph III of this exhibit. In LSASA states, AD-622s may not exceed 150 percent of the amount the State contributed to the LSASA. In SSASA states, AD-622s may not exceed the greater of $750,000 or 150 percent of the amount the state contributed to the SSASA.

VIII. *Exception Authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or RRH program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from the reserve, or restrict participation in the set aside.

[55 FR 52835, Dec. 24, 1990]

Subparts M—R [Reserved]

Subpart S—Accountability Requirements of Persons Paid to Influence the Making of an FmHA Housing Loan and/or Grant

SOURCE: 55 FR 25075, June 20, 1990, unless otherwise noted.

§ 1940.901 Purpose.

This subpart implements section 401(a) of the Housing and Urban Development Reform Act of 1989 ("HUD Reform Act"), Public Law (P.L.) 101-235, approved December 15, 1989, which adds section 536(d) to the Housing Act of 1949. Section 401(a) imposes registration and reporting requirements on any person engaged for pay or for any consideration for the purpose of attempting to influence the making of a Farmers Home Administration (FmHA) housing loan and/or grant, and limits fees a person may charge for this service. Section 401(a) and this subpart do not apply to other FmHA loan and/or grant programs.

§ 1940.902 Objective.

To ensure compliance with the HUD Reform Act and ensure that persons influencing the making of an FmHA housing loan and/or grant register and report their activities to FmHA and do not seek fees contingent upon obtaining assistance.

§ 1940.903 Definitions.

As used in this subpart only.

Communication. Includes written, oral, electronic or any other means of communication.

Department. United States Department of Agriculture .

Engaged. Retained pursuant to an agreement for "pay or for other consideration." The term includes the employment relationship between a person and its officers or employees.

FmHA. Farmers Home Administration.

FmHA housing loan and/or grant. Any loan: insured; direct or guaranteed, made pursuant to the Housing Act of 1949, as amended. The term includes rental assistance (RA) and interest credits. The term does not include contracts, such as procurement contracts, which are subject to the Federal Acquisition Regulation (FAR).

Indian tribe and tribal organization. Those defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Alaskan Natives are included under the definitions of Indian tribes in that Act.

Influence or attempt to influence. Includes (but is not limited to) any effort to effect any aspect, including (but not limited to) the outcome, of the making of an FmHA housing loan and/or grant. Influence may be actual or constructive.

Officer or employee.

(a) In the case of an individual employed by the Department, the term includes:

(1) An individual who is appointed to a position in the Department under title 5, United States Code, including a position under a temporary appointment;

(2) A special government employee, as defined in section 202, title 18, United States Code; and

(3) An individual who is a member or a Federal Advisory Committee, as defined by the Federal Advisory Committee Act, title 5, United States Code.

(b) In the case of an individual employed by a person, the term includes an individual who is in any way retained, designated, appointed, employed, or receiving compensation of any kind from the person to perform duties of any kind and on any basis, including full-time, part-time, or temporary basis.

Pay or other consideration. Includes (but is not limited to) a payment, distribution, loan, advance, deposit, gift of money, or the provision of anything else of value. The term includes pay or other consideration made by, or on behalf of, a person. Pay or other consideration is considered to have been made when the person makes it available to another person without restriction. Receipt of the pay or other consideration is not necessary—only that same has been offered. Ownership by an individual of a single family home financed under the section 502 program does not constitute pay or other consideration.

Person. An individual (including, but not limited to, a consultant, lobbyist, or lawyer), corporation, association, authority, firm, partnership society, State, local government, or any other organization or group of people. This term excludes an Indian tribe, tribal organization, or any other Indian organization.

Professional services. Includes (but is not limited to) legal, technical and other advice/services needed to support the preapplication/application for an FmHA housing loan and/or grant.

§§ 1940.904—1940.905 [Reserved]

§ 1940.906 Interrelationship of this subpart and Pub. L. 101-121.

Section 319 of Public Law 101-121 contains a general prohibition on the use of federally appropriated funds for influencing the award of Federal contracts, loans, grants, cooperative agreements and certain post award actions. It also requires disclosure of certain information on payments from nonappropriated funds that are used to influence the aforementioned Federal actions as well as the insurance and guarantee of loans. Section 319 of Public Law 101-121 applies to all Federal agencies (and all FmHA programs) and was implemented by a government-wide common rule published on February 26, 1990 at 55 FR 6736. Section 319 of Public Law 101-121 and this subpart contain similar but overlapping requirements. Compliance with one Public Law does not preclude compliance with the other Public Law. Persons influencing the making of an FmHA housing loan and/or grant should be familiar with both Public Laws and ensure compliance with either, or both, as applicable.

§ 1940.907 Who must comply with this subpart.

This subpart applies to any person who is engaged for pay or for any consideration to influence, or that should reasonably have the effect of influencing, the making of an FmHA housing loan and/or grant through direct communication with any officer or employee of the Department. The influencing (or attempt to influence) must be related to a specific request for an FmHA housing loan and/or grant although an application/preapplication need not be on file with FmHA. Influencing (or attempting to influence) policy issues, not related to a specific request for an FmHA housing loan and/or grant, is not subject to this subpart. See exhibit A of this subpart (available in any FmHA office) for specific examples of covered actions. Although FmHA applicants do not have any direct responsibilities under this subpart, they should carefully review §§ 1940.913 and 1940.916 of this subpart.

§ 1940.908 Prohibited practices.

Any person meeting the provisions of § 1940.907 of this subpart, shall not seek or receive any fee that is:

(a) Based upon the amount of the FmHA loan and/or grant or the number of units being developed, or

(b) Contingent upon approval of an FmHA housing loan and/or grant by FmHA, *except* that professional services related to a project may be donated in whole or in part to a community housing development organization in the event the FmHA housing loan and/or grant is not made. For the purposes of this paragraph, "donated * * * in part" means that at least 33⅓ percent of the total value of the professional services must be donated to the community housing development organization before the exception is permitted.

§§ 1940.909—1940.910 [Reserved]

§ 1940.911 Reporting and registration requirements.

Any person meeting the provisions of § 1940.907 of this subpart, must:

(a) *Register.* Prior to any influencing activities, Form FmHA 1940-39, "Declaration of Registrant," must be submitted to FmHA.

(b) *Report quarterly.* Each person registering under paragraph (a) of this section must, between the first and tenth day of each calendar quarter, so long as the person's activities continue, submit Form FmHA 1940-40, "Quarterly Declaration of Registrant," to FmHA. Calendar quarters are January 1, April 1, July 1, and October 1.

(c) *Submit registration/reporting forms.* Forms FmHA 1940-39 and FmHA 1940-40, must be submitted to: Farmers Home Administration, USDA, ATTN: 1940-S Coordinator, 14th Street and Independence Avenue, SW., Washington, DC 20250. Persons registering/reporting to FmHA may also be requested by FmHA field offices to supply documentation that they have complied with this Subpart. If requested, the registrant will provide documentation to an FmHA field office to verify that applicable forms have been submitted to the FmHA National Office in Washington, DC.

(d) *Keep records.* Persons required to register/report under this subpart will maintain records and documentation to support information contained in Forms FmHA 1940-39 and FmHA 1940-40.

§ 1940.912 Exceptions.

The following exceptions apply to the registration and reporting requirements contained in § 1940.911 of this subpart:

(a) *Compliance with FmHA requirements.* Where the conditions, requirements, or procedures are imposed, or are reasonably believed by the person to be imposed by law, regulation or written directive (such as an FmHA Administrative Notice [AN], unnumbered letter, Exhibit, application document, etc.), registration or reporting is not required. This includes a request for information by FmHA to support the making of an FmHA housing loan and/or grant not specifically addressed in the applicable program making regulation.

(b) *Litigation.* Litigation against the Department of FmHA is exempt from registration or reporting requirements. In addition, litigation taken by the Department or FmHA, including (but not limited to) civil actions, criminal proceedings, or administrative proceedings pusurant to statute or regulation is exempt.

(c) *Appeals.* Appellants and their representatives who have filed an appeal pursuant to Subpart B of Part

1900 of this chapter are exempt from registration or reporting requirements.

§ 1940.913 Applicability of this subpart to FmHA housing applicants.

This subpart describes the reporting/registration requirements of persons who are engaged for pay or for any consideration for attempting to influence the making of an FmHA housing loan and/or grant. It also establishes limits on fees a person that influences may receive. Although no such requirements are placed upon the applicant for the FmHA housing loan and/or grant, the failure of the person paid to influence a request for assistance could adversely affect an application. This could include the termination of processing an application, recapturing any funds advanced, etc. It is therefore incumbent upon housing applicants to ensure that any person they engage to influence their application complies with this subpart. Applicants should review § 1940.916 of this subpart for specific administrative remedies and civil penalties which may be imposed upon the influencer and/or applicant.

§§ 1940.914—1940.915 [Reserved]

§ 1940.916 Remedies and penalties.

(a) *Administrative remedies.* If the Administrator receives or obtains information providing a reasonable basis to believe that a violation of this subpart has occurred, the Administrator shall:

(1) If the request for assistance has not been approved, determine whether to return the complete request for assistance to the applicant, or take other appropriate actions; or

(2) If the request for assistance has been approved, determine whether to:

(i) Void or rescind approval, subject to review and determination on the record after the opportunity for a hearing;

(ii) Impose sanctions against the violator, including debarment, subject to review and determination on the record after the opportunity for a hearing;

(iii) Stop disbursement of any remaining loan and/or grant funds;

(iv) Recapture any funds that have been advanced;

(v) Permit the applicant to continue with the processing of the FmHA housing loan and/or grant;

(vi) Take any other actions the Administrator deems appropriate.

(3) The Administrator shall publish in the FEDERAL REGISTER each action and determination under this paragraph.

(b) *Civil penalties.* Any person who violates this subpart shall be subject to the imposition of a civil penalty in a civil action brought by the United States in an appropriate district court of the United States. A civil penalty may not exceed:

(1) $100,000 in the case of an individual; or

(2) $1,000,000 in the case of other than an individual.

(c) *Disposition of civil penalties.* Notwithstanding any other provision of the law, all civil monetary penalties collected under this subpart shall be deposited in the Rural Housing Insurance Fund.

(d) *Appeals.* Administrative remedies sought and/or taken pursuant to this subpart against the applicant for the FmHA housing loan and/or grant are subject to subpart B of part 1900 of this chapter. Administrative remedies and civil penalties sought and/or taken against the person paid to influence FmHA pursuant to this subpart are not subject to subpart B of part 1900 of this chapter.

§ 1949.917 Nonexclusiveness of remedies.

This subpart shall not be construed to limit the applicability of any other requirements, sanctions, penalties, or remedies established in any other law. Other requirements, sanctions, penalties, or remedies required by FmHA regulations and/or statutes or laws shall apply independently and in addition to the remedies set forth in this subpart.

§§ 1940.918—1940.949 [Reserved]

§ 1940.950 Office of Management and Budget (OMB) reporting and recordkeeping requirements.

The reporting and recordkeeping requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0139. Public reporting burden for this collection of information is estimated to vary from five minutes to two hours per response, with an average of 1.67 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0575-0139), Washington, DC 20503.

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

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AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

SOURCE: 43 FR 55883, Nov. 29, 1978, unless otherwise noted.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35684, Sept. 14, 1988, unless otherwise notes.

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL-Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporation, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4-H, Future Farmers of America, and similar organizations. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands. FmHA forms are available in any FmHA office.

§ 1941.2 Objectives.

The basic objective of the OL loans program is to provide credit and management assistance to farmers and ranchers to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere. The objective of the OL loan program for rural youth is to provide credit for rural youths to establish and operate income-producing projects of modest size in connection with their participation in 4-H clubs, Future Farmers of America, and similar organizations.

§ 1941.3 Management assistance.

As provided in Subpart B of Part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in Tables available in any FmHA office. Z

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May use a reasonable amount of full-tme hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farm operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period;

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of this subpart, for annual production loans or subordinations made to delinquent borrowers; and

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower of farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

Fish. Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Joint operation. Individuals who have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resources applicant. An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm), including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited eduction, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, road stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

Recreation enterprise. An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Rural youth. A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

Rural youth projects. Modest projects initiated, developed, and carried out by rural youths participating in 4-H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

Security. Property of any kind subject to a real or personal property lien. Any references to collateral or security property shall be considered a reference to the term "security."

State or United States. The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA.

(c) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operator as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§§ 1941.7—1941.10 [Reserved]

§ 1941.11 Applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of this subpart and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1941.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTER-AGENCY LAW ENFORCEMENT REQUEST".

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see § 1941.4 of this subpart.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members, stockholders, partners or joint operators who are individuals and not cooperative(s), corporation(s), partnership(s), or joint operation(s).

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1941.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of the INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(iv) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4 of this subpart:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners, or joint operators must own *or* operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(8) If each member's, partner's, stockholder's, or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) all of the members of the entity are related by blood or marriage,

(ii) all of the members are or will be operators of the entity, and

(iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990]

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4-H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower's case file.

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility criteria in § 1941.12 of this subpart, and whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering consolidation, rescheduling and/or reamortizing at regular interest rates and consolidation, rescheduling and/or reamortizing at limited resource rates and deferral of principal and interest payments, including distressed Farmer Program loans for softwood timber production in applicable areas, all in accordance with Subpart S of Part 1951 of this chapter, will automatically be considered for annual production loans under this section or subordinations under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA.

(2) The borrower has been unable to pay accounts as scheduled. The following are examples, but eligibility is not limited to these examples:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or under employment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management practices spelled out in Item D of Form FmHA 431-2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security, and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplied credit for the production and marketing cycle can be repaid from the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Nondisturbance agreements will be obtained from other creditors, as necessary.

(7) If FmHA has completed the process of considering the borrower for debt restructuring, pursuant to Subpart S of Part 1951 of this chapter, and the borrower has received the benefits of conservation easement or debt write-down, bringing the account current, the borrower may be considered for an annual production loan or subordination in the future, if the account again becomes delinquent due to circumstances beyond the borrower's control. Those borrowers for whom FmHA has completed the process of consideration for debt restructuring (including any administrative appeal and further review), who are determined not eligible for conservation easement or debt write-down benefits, and whose accounts have been accelerated, will not be eligible for assistance under this section. If FmHA has not completed the process (including any administrative appeal and further review) of considering the borrower for debt restructuring, the borrower may be considered for assistance under this section.

(b) Loan funds will be used to pay essential annual operating and family living expenses only, as defined in § 1962.17 (b)(2)(ii)(A) of subpart A of part 1962 of this chapter.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(c) of this subpart.

(e) Form FmHA 1941-1, "Criteria for Continuing Assistance to Delinquent Borrowers," is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941-A-1, "Advice to Borrower of Financial Condition," of their serious financial condition; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision will be made, at that time, whether FmHA will consider assistance for another year to continue their operations. The County Supervisor will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941-A-1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 11366, Mar. 20, 1989; 55 FR 21527, May 25, 1990]

§ 1941.15 [Reserved]

§ 1941.16 Loan purposes.

Except for entity borrowers, 10 percent or $5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation, and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, poultry, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than $15,000 in a fiscal year for real estate improvements or repairs. The following determinations must be made before an OL loan is made for real estate improvements:

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

(m) To plant softwood timber on marginal land which was previously used to produce an agricuultural commodity or as pasture.

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant will exceed $200,000 at loan closing.

(b) If the total outstanding youth loan principal balance will exceed $5,000 at loan closing.

(c) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(d) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Refer to Subpart LL of Part 2000 of this chapter, "Memorandum of Understanding Between FmHA and the U.S. Fish and Wildlife Service," for assistance in implementation.

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A borrower with Limited Resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and at any time a servicing action such as consolidation, rescheduling or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note. The first installment must be scheduled for payment within 18 months of loan closing.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months but no later than 18 months, from the date the loan is closed when marketing plans extend beyond 12 months. When an OL loan for annual production is scheduled for repayment in one installment, the installment must fall due no later than 18 months from the date of loan closing. Individual marketing circumstance may warrant repayment schedules which are longer than 18 months. Such factors as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, marketing plans, or during recovery from a disaster or economic reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/

or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA 440-9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be rescheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990]

§ 1941.19 Security.

Security must be adequate to assure repayment of the loan. The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3(d) of Subpart A of Part 1910 of this chapter or a pledge of security from someone other than the borrower(s). Generally, a pledge of security is preferable to a cosigner. Loans may be subordinated to another lender in accordance with § 1962.30 of Subpart A of Part 1962 of this chapter when the subordination will help the borrower to accomplish the objectives of the loan.

(a) *Exceptions.* (1) A lien will not be taken on property that cannot be made subject to a valid lien.

(2) A lien will not be taken on subsistence livestock, household goods, and small tools and small equipment, such as hand tools, power lawn mowers, and other items of like type not needed for security purposes.

(3) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(4) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. When the amount of the loan exceeds the equity in chattel security by more than $10,000, the best lien obtainable will be taken on real estate having sufficient collateral equity to fully secure the loan(s) being made. Different lien positions on real estate are considered separate and identifiable collateral. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427-1 (State), "Real Estate Mortgage for ____," will be used to obtain such a lien, unless a State supplement requires a different form.

(c) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(d) *Insurance.* See § 1941.88 of Subpart B of this part for insurance requirements.

(e) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer programs insured or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(f) *Income from products and program payments.* Assignments, consents and security interests relating to income from products and program payments will be used when necessary to protect FmHA's interest as follows:

(1) Form FmHA 441-8, "Assignment of Proceeds from the Sale of Agricultural Products," for products or income in which FmHA does not have a security interest under UCC. Other forms approved by OGC may be used when this form is not adequate.

(2) Form FmHA 441-8, "Consent to Payment of Proceeds from Sale of Farm Products," for products or income, except dairy products in which FmHA has a security interest under UCC.

(3) Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," for dairy products in which FmHA has a security interest under UCC.

(4) Forms provided by ASCS will be used for assignment of incentive and other agricultural program payments.

(5) A security interest on income from products and ASCS incentive and other agricultural program payments.

(g) *Fixtures.* A security interest may be taken in fixtures. An item is generally considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself. When determined necessary by OGC, a State supplement will be issued to further explain the taking of a security interest in fixtures.

(1) A security interest taken in goods *before* they become fixtures has priority over real estate interest holders.

(2) A security interest taken in goods *after* they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute Form FmHA 440-26, "Consent and Subordination Agreement".

(h) *Milkbase and grazing permits.* The advice of OGC will be obtained as to how to perfect a security interest when these items are financed or taken as security.

(i) *Stock in cooperative associations.* Loans only for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided the security interest has value to FmHA. A security interest also may be taken in dividends to be paid on stock, memberships, or patronage, or in undivided profits and other retainages. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC. Stock certificates and similar collateral will be kept in the County Office. A notation will be made on Form FmHA 1905-1,

"Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the FmHA interest.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.20—1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of Part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with Title V of Pub. Law 93-495, the Equal Credit Opportunity Act, FmHA will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of Subpart F of Part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

(a) Real estate appraisals will be completed by an FmHA employee or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on Form FmHA 440-21, "Appraisal of Chattel Property," FmHA 422-1, "Appraisal Report (FARM TRACT)," and FmHA 1922-11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

(1) A chattel appraisal is required when an initial loan is made and chattels are required for security, and when refinancing chattel debt.

(2) A real estate appraisal is required when real estate is needed as additional security or for refinancing.

(b) *Appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least *one* of the following qualifications:

(1) Certification by a National or State appraisal society.

(2) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meet the criteria for a certification in a National or State appraisal society.

(3) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

§§ 1941.26—1941.28 [Reserved]

§ 1941.29 Relationship between FmHA loans, insured and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) An insured OL loan may be made to a guaranteed loan borrower provided:

(1) The outstanding insured and guaranteed OL principal balance owed by the loan applicant does not exceed $400,000 at loan closing.

(2) The outstanding combined insured and guaranteed OL principal balance owed by the loan applicant, or owed by anyone who will sign the note as co-signer evidencing personal liability, will not exceed the authorized guaranteed OL loan limit providing the portion representing the insured OL indebtedness does not exceed the insured loan limit. The deciding factors are the type of entity and the personal liability of the entity members. Individuals, who are members or stockholders of a cooperative or corporation that is indebted for a $200,000 insured and $200,000 guaranteed OL loan, can each borrow a $200,000 insured and $200,000 guaranteed OL loan, or any combination of insured or guaranteed OL loan funds that does not cause them to exceed the individual insured or guaranteed OL loan limits, provided they conduct separate farming operations as individuals and they have not signed as individuals giving personal liability for the entity OL debt. Likewise, such entities whose members or stockholders are individually indebted for the maximum insured or guaranteed OL loan limit, may borrow the maximum insured or guaranteed OL loan limits, providing none of the members or stockholders are required to pledge personal liability for the entity debt. Partners or joint operators of a partnership or joint operation, which is indebted for a $200,000 insured and a $200,000 guaranteed OL loan, cannot borrow additional OL funds as individuals in a separate operation because they are each personally liable for the total entity debt. Likewise, such entities, consisting of individuals who are indebted for the maximum insured or guaranteed OL loan limits, are not eligible for OL loan assistance.

(3) Chattel and/or real estate security must be separate and identifiable from the security pledge to FmHA for a guaranteed loan. Different lien positions on real estate are considered separate and identifiable security.

(c) An insured OL loan will be made to refinance a guaranteed OL loan when the following conditions are met.

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the insured OL loan is closed.

(d) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE loan and any FO, SW, RL and/or OL loans will not exceed $650,000.

[53 FR 36240, Sept. 19, 1988, as amended at 55 FR 21527, May 25, 1990]

§ 1941.30 Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440-2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

§ 1941.31 [Reserved]

§ 1941.32 Loan docket processing.

See Exhibit A of this subpart for the loan docket processing guide.

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided the total insured operating loan principal balance at loan closing does not exceed $200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is based on a feasible plan, or meets the requirements set forth in § 1941.14(a)(5) of this chapter for annual production loans to delinquent borrowers. Planning forms other than Form FmHA 431-2 may be used when they provide all the necessary information.

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained; and

(v) Send a signed copy of Form FmHA 1940-1 to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following actions will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official. The reasons may be in a letter or the running record if this from has not been completed. Suggestions of how to remedy the disapprovals should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken, and include any suggestions that could result in favorable action. When denial of an OL loan to a delinquent farmer program borrower is involved, the County Supervisor must clearly explain why the borrower is not eligible for the OL loan and why the borrower is not eligible for an annual production loan as outlined in § 1941.14 of this chapter. The applicant will be notified, in writing, of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

[53 FR 35664, Sept. 14, 1988, as amended at 54 FR 11366, Mar. 20, 1989]

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the County Office computer terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be canceled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office). (c) Cancellation of advances. When an advance is to be cancelled the County Supervisor must take the following actions:

(c) Cancellation of advances. When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940-10.

(2) When necessary, prepare and excute a subsitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 39727, Sept. 28, 1989]

§§ 1941.36—1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with Subpart B of Part 1941 of this chapter.

§§ 1941.39—1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1962 of this chapter and/or Subpart S of Part 1951 of this chapter.

§§ 1941.43—1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBITS TO SUBPART A

EXHIBIT A—PROCESSING GUIDE—INSURED OPERATING LOANS

This Exhibit outlines the basic steps involved in processing a loan application and identifies the FmHA forms which should be considered for use at each step.

Consult the appropriate Forms Manual Insert (FMI) for instructions for completion, distribution, and procedural references for each form.

APPLICATION PROCESSING

A. APPLICANT INTERVIEW

Review applicant's proposed plan of operation in view of authorized loan purposes and limitations on loans.

Begin running case record.

Provide applicant with FmHA forms to be completed and returned which are needed to determine eligibility. Be sure applicant understands the purposes of the forms and knows who must complete them.

Advise applicant of other information that must be given to FmHA.

When appropriate, have applicant contact other creditors as possible credit sources for financing, or participating in the financing of the proposed operation.

The following FmHA forms will be made available to the applicant or will be used by the County Supervisor. Forms designated with an "x" are always required and those designated with an "*" are to be used when appropriate.

Form No	Name
410-1	Application for FHA Services
1910-5	Request for Verification of Employment.
410-9	Statement Required by the Privacy Act.
410-10	Privacy Act Statement to References

Form No	Name	
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	(x)
431-1	Long-Time Farm and Home Plan	(*)
431-2	Farm and Home Plan	(x)
431-4	Business Analysis—Nonagricultural Enterprise	(*)
440-32	Request for Statement of Debts and Collateral	(*)
1940-51	Crop-Share-Cash Farm Lease	(*)
1940-53	Cash Farm Lease	(*)
1940-55	Livestock-Share-Farm Lease	(*)
1940-56	Annual Supplement to Farm Lease	(*)

B. FIELD VISIT

Notify applicant of planned visit and its purpose.

Evaluate the resources available to the applicant and determine whether or not they adequately fulfill the requirements of the proposed plan of operation.

Obtain information needed to complete required appraisals (chattel and real estate).

Hold landlord-tenant meeting, if necessary, to reach an agreement on the terms of the lease, resolve any problems, etc.; record in running case record.

Determine security requirements and record in running case record.

The following FmHA forms will be used as appropriate:

Form No.	Name	
440-21	Appraisal of Chattel Property	(*)
2006-9	Notice of Visit or Meeting	(x)
422-1	Appraisal Report—Farm Tract	(*)
422-2	Supplemental Report—Irrigation, Drainage, Levee, and Minerals	(*)
422-3	Map of Property	(*)
422-10	Appraiser's Worksheet—Farm Tracts for Study of Comparable Properties	(*)
440-13	Report of Lien Search	(*)

C. ELIGIBILITY DETERMINATION

Obtain all needed application forms, and other information from the applicant; assist the applicant in completing these forms and in obtaining needed information, as necessary.

Request copy of deed or other evidence of title, when needed.

Schedule meeting with county committee, review application and determine eligibility.

Inform applicant of the results of committee action.

The following FmHA forms will be used as appropriate in accomplishing the above actions:

Form No	Name	
403-1	Debt Adjustment Agreement	(*)
440-2	County Committee Certification or Recommendation	(x)

DOCKET PREPARATION

Obtain all information from the applicant, prior lienholder(s), landlord(s), etc., needed for the loan docket to be prepared.

Check to make sure all security requirements have been met or will be met by loan closing.

Prepare a loan narrative, for running record.

The following FmHA forms will be completed and utilized as necessary in preparing the loan docket for approval:

Form No	Name	
400-4	Assurance Agreement	(*)
427-8	Agreement with Prior Lienholder	( )
1940-1	Request for Obligation of Funds	(*)
440-4	Security Agreement (Chattels and Crops)	( )
440-9	Supplementary Payment Agreement	(*)
1940-20	Request For Environmental Information	(*)
440-25/ 440A25	Financing Statement	(*)
440-26	Consent and Subordination Agreement	( )
1940-21, 1940-22, or Exhibit H, Subpart G of Part 1940	Environmental Review	(*)
441-5	Subordination Agreement	(*)
441-8	Assignment of Proceeds from the Sale of Products	( )
441-10	Nondisturbance Agreement	( )
441-12	Agreement for Disposition of Jointly Owned Property	(*)
441-13	Division of Income and Nondisturbance Agreement	(*)
441-17	Certification of Obligation to Landlord	( )
441-18	Consent to Payment of Proceeds from Sale of Farm Products	(*)
441-25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest	( )

LOAN APPROVAL AND CLOSING

A. LOAN APPROVAL

File financing statement or chattel mortgage, and obtain a lien search.

Request preliminary title opinion when appropriate.

Record loan closing conditions in the running record.

Execute and distribute all forms necessary for loan approval.

B. LOAN CLOSING

Request needed legal services.

Arrange for loan closing by county office, escrow agent, designated attorney, or other authorized loan closing agent; furnish loan closing agent with appropriate instructions, forms, and other needed information for loan closing.

The following FmHA forms will be used by the County Office in addition to those forms listed under docket preparation which must be executed by the borrower or other party:

Form No.	Name	
400-6	Compliance Statement	(*)
402-1	Deposit Agreement	(*)
402-2	Statement of Deposits and Withdrawals	(*)
427-1 (State)	Real Estate Mortgage or Deed of Trust for ————	(*)
427-5	Affidavit of Borrowers (or Transferees)	(*)
427-9	Preliminary Title Opinion	(*)
1940-17	Promissory Note	(x)

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[43 FR 55883, Nov. 29, 1978, as amended at 45 FR 16166, Mar. 13, 1980; 47 FR 21236, May 18, 1982; 48 FR 6, Jan. 3, 1983; 49 FR 3759, Jan. 30, 1984; 50 FR 16055, Apr. 24, 1985; 50 FR 27415, July 3, 1985; 50 FR 32844, Aug. 15, 1985; 54 FR 28019, July 5, 1989; 54 FR 29330, July 12, 1989; 54 FR 47959, Nov. 20, 1989; 55 FR 21527, May 25, 1990]

EXHIBIT B—[RESERVED]

EXHIBIT C—CONTROLLED SUBSTANCE

(NOTE.—Exhibit C referenced in this subpart is available in any FmHA office.)

[53 FR 35684, Sept. 14, 1988]

Subpart B—Closing Loans Secured by Chattels

§ 1941.51 Purpose.

This subpart prescribes Farmers Home Administration (FmHA) policies, procedures, and authorizations for closing insured loans secured by chattels. These loans are considered closed on the date the promissory note is executed.

§§ 1941.52—1941.53 [Reserved]

§ 1941.54 Promissory Note.

(a) *Executing the note.* Form FmHA 1940-17, "Promissory Note," will be executed and dated following receipt of the loan check in the county office and prior to the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(b) *Signatures*—(1) *Individuals.* Only the applicant is required to sign the promissory note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment requirements for the loan request. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The appropriate officer will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

[43 FR 55883, Nov. 29, 1978, as amended at 51 FR 13448, Apr. 21, 1986; 53 FR 3568 Sept. 14, 1988]

§§ 1941.55—1941.56 [Reserved]

§ 1941.57 Security instruments.

Security instruments referred to in this Subpart are financing statements, security agreements, chattel mortgages, and similar lien instruments. To obtain a security interest in chattels and crops in States which have adopted the Uniform Commercial Code (UCC), both a financing statement and a security agreement are required, although only the financing statement must be filed or recorded in public records. See paragraph (g) of this section for filing or recording instructions. In Louisiana a Chattel Mortgage and Crop Pledge or Crop Pledge, as appropriate, is required to obtain a security interest in chattels and crops.

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien(s), security instruments will be executed by:

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possible meet the security requirements for the loan request.

(2) Appropriate partners or joint operators on behalf of a partnership or joint operation; and the instruments will also be executed by all partners, or all joint operators, who will sign as individuals.

(b) *Undivided interests.* An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property will secure the loan with a lien on the undivided interest in the property. All individuals having an undivided interest in the security will execute Form FmHA 441-12, "Agreement for Disposition of Jointly-Owned Property", unless a written agreement to the same affect as this form has already been signed.

(c) *Security instrument forms.* (1) Form FmHA 440-25, "Financing Statement," or Form FmHA 440A-25, "Financing Statement (Carbon-Interleaved)"; and Form FmHA 440-4, "Security Agreement (Chattels and Crops)," will be used to obtain security interests in chattel property in States which have adopted the Uniform Commercial Code (UCC), unless a State supplement requires the use of other forms.

(2) Form FmHA 440-4 LA, "Chattel Mortgage and Crop Pledge (Louisiana)," or Form FmHA 440-4A LA, "Crop Pledge (Louisiana)," will be used in the State of Louisiana.

(3) Other forms will be used as provided in State supplements in Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

(d) *Taking security instruments*—(1) *Financing statement.* A financing statement is effective for 5 years from the date of filing and as long thereafter as it is continued by filing a continuation statement.

(i) *Initial loan.* A financing statement will be required for every initial loan except when a filed financing statement covering the applicants property is still effective, covers all types of chattel property that will serve as security for the initial loan, and describes the land on which crops and fixtures are or will be located.

(ii) *Subsequent loan.* A financing statement will not be required unless the filed financing statement is not effective, does not cover all types of chattel property that will serve as security for the subsequent loan, or does not describe the land on which crops or fixtures are or will be located. If the loan debt is being secured for the first time, however, the procedure for securing initial loans stated in paragraph (d)(1)(i) of this section will be followed.

(2) *Security Agreements*—(i) *Initial loan.* When an intitial loan is made to an applicant, including to a paid-in-full borrower, a new security agreement will be required in all cases. The security agreement will be executed not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(ii) *Subsequent loan.* An additional security agreement will be required if property which is to serve as security for the debt is not described either specifically or in the printed form of the previous security agreement, or if an additional agreement it is needed to obtain or maintain a security interest in crops.

(A) An additional security agreement may also be executed to reflect significant changes in security.

(B) An additional security agreement is not necessary if the existing security agreement covers all types of chattels that will serve as security for the subsequent loan, describes the land on which the crops or fixtures are or will be located, and was executed within 1 year before the crops which are offered as security became growing crops.

When determined necessary by OGC, a State supplement will be issued to further explain when a security agreement covering crops will be required.

(e) *Describing collateral in security instruments.* (1) Financing statements describe certain types of collateral. If items of collateral not covered in the printed form of the financing statement are to serve as security, they should be described by type or specifically identified.

(2) Generally, animals, birds, fish, etc., should be described by groups in the security agreement. The serial or other identification numbers of major items of equipment should be listed in the security agreement. If a security interest is to be taken in property such as inventory, supplies, recreation or other nonfarm equipment, or fixtures which cannot be readily described under the column headings of items 2 or 3 of Form FmHA 440-4, an appropriate description of such property will be inserted in item 2 or 3 below the other property, without regard to the column headings.

(3) The advice of the Office of the General Counsel (OGC) will be obtained as to how to describe in financing statements and security agreements items such as grazing permits, milk bases, and membership or stock in cooperative associations. The property to be described in security instruments should be reconciled with any existing security instruments and with Form FmHA 462-1, "Record of the Disposition of Security Property."

(4) After the initial security agreement is executed, and after the borrower obtains all the property which FmHA wants specifically described, by item, in the security agreement, a new security agreement will be executed.

(f) *Executing security instruments by County Office employees.* The County Supervisor and any County Office employee authorized by the County Supervisor may execute on behalf of the Government any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, security agreements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits and acknowledgments.

(g) *Filing or recording security instruments.* (1) Ordinarily, in States which have adopted the UCC, financing statements may be delivered by hand or mailed to the filing officers for filing or recording when the loan is approved. However, when this is not practical, the financing statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower. If crops or other property of the borrower are located or will be located in a State other than that of the borrower's residence, the County Office servicing the loan will contact the County Office in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The financing statement will be filed or recorded as required by State supplements.

(2) Security agreements will not be filed or recorded unless required by State supplements. Form FmHA 440-4 LA or Form FmHA 440-4A LA will be filed or recorded in Louisiana as provided by State supplements.

[43 FR 55883, Nov. 29, 1978, as amended at 50 FR 27415, July 3, 1985; 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988]

§§ 1941.58—1941.59 [Reserved]

§ 1941.60 Purchase money security interest.

A purchase money security interest will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the property or within 10 days thereafter, subject to the following limitations:

(a) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession or within 10 days. In some States, it is not necessary to file a financing statement to perfect a security interest in such motor vehicles; however, FmHA will always require both a security agreement and a financing statement. A State supplement will be issued, if necessary to set out the procedure for obtaining a lien on a motor vehicle, motorboat, or any special type of security.

(b) *Farm equipment.* A purchase money security interest in farm equipment costing $2,500 or less (other than fixtures or motor vehicles required to be licensed), will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not executed or filed. FmHA, however, will always file a financing statement. State supplements will be issued, as necessary, to further explain the requirements for complying with this section.

(c) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest, provided:

(1) A security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property, and

(2) Before the purchaser takes possession of the property, written notice is given to the party holding the earlier perfected interest that the purchase money creditor has acquired or expects to acquire a purchase money security interest in the inventory, which must by described by item or type. When determined necessary by OGC, a State supplement will be issued to further explain the requirements for perfecting a purchase money security interest in inventory.

(d) *Fixtures.* A security interest taken in goods before they become fixtures has priority over a security interest in the real estate to which they are attached. A security interest taken in goods after they become fixtures is valid against all persons later acquiring an interest in the real estate. It is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute a consent disclaimer or Form FmHA 440-26, "Consent and Subordination Agreement".

(e) *Crops.* A security interest taken in crops not more than 3 months before the crops are planted or otherwise become growing crops, has priority over an earlier perfected security interest, if the obligation underlying the earlier interest was due more than 6 months before the crops became growing crops.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.61—1941.62 [Reserved]

§ 1941.63 Lien search.

(a) *Required lien searches.* (1) A lien search will be obtained at a time that assures that the security instruments give the Government the required security, usually at the time the financing statement (mortgage or crop pledge in Louisiana) is filed or recorded. Lien searches may be obtained after the financing statement is filed, but never after the delivery of the loan check or the first withdrawal of loan funds from the supervised bank account. Form FmHA 440-13, "Report of Lien Search," or other lien search forms will be used.

(2) Under the UCC, lien searches are necessary in making subsequent loans if an additional financing statement is required; *i.e.*, when crops or fixtures to be taken as security are or will be located on land not described in the existing financing statement, or when property not covered by the financing statement is to be taken as security for the loan.

(3) Lien searches also may be obtained in connection with processing applications when the County Supervisor determines such searches are necessary on an individual case basis.

(4) Although a lien search is not always required for youths who are minors (as defined in State supple-

ments), the County Supervisor may determine that a search is necessary to assure the Government obtains the required security interest.

(b) *Responsibility for obtaining lien searches.* (1) Applicants should obtain and pay for lien searches. FmHA County Office employees may make lien searches (at no cost to the applicant) in exceptional cases, such as when no other person is available to provide such a service, or when experience has shown that using the service available would lead to an undue delay in closing the loan and the delay would cause undue hardship to the borrower.

(2) The State Director will issue a State supplement setting forth the requirements for lien searches, including the records to be searched and the periods to be covered.

(3) The applicant should be informed of County Clerks, local attorneys or other persons who will conduct lien searches at a reasonable cost. The applicant will select the lien searcher. The cost of a lien search can be paid from the proceeds of loan checks.

§§ 1941.64—1941.66 [Reserved]

§ 1941.67 Additional requirements for perfecting security interests.

If necessary because of provisions in State statutes, leases, land purchase contracts, or real estate mortgages commonly in use, State Directors will issue State supplements which tell how to obtain a subordination agreement, certification of obligation to landlord, disclaimer, and consent and subordination agreement to perfect security interest.

(a) *Form FmHA 441-5, "Subordination Agreement."* This form will be used if a subordination agreement is required by FmHA on crops, livestock, farm equipment, or other chattels. If Form FmHA 441-5 is not legally sufficient, a form recommended by OGC will be used. The time to be covered by the subordination agreement generally will be equal to the repayment period of the loan or for the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(b) *Form FmHA 441-17, "Certification of Obligation To Landlord."* This form may be used instead of obtaining a subordination agreement if:

(1) It appears that the applicant is not financially obligated to the landlord except for rent for the lease year and will not incur other obligations to the landlord during that year, and

(2) A State supplement authorizing the use of Form FmHA 441-17 in such cases has been issued.

(1) State Directors will issue State supplements which specify when a severance agreement is required under State law, whether the severance agreement should be filed or recorded, and whether the spouse of the borrower and the spouse(s) of the other party(ies) of interest will be required to execute the severance agreement. These supplements will tell FmHA employees what actions to take to prevent the property from becoming part of the real estate. Directions for severing the property after it has become attached to the real estate will also be included.

(2) Severance agreements will be executed no later than the date the property purchased with loan funds is delivered to the farm. Where a loan is made to refinance debts on property, the severance agreement must be executed before the release of funds to the creditor.

(c) *Form FmHA 440-26, "Consent and Subordination Agreement."* Unless otherwise provided by a State supplement, this form rather than a severance agreement will be used in UCC States when a security interest is taken in property after it has become a fixture.

(1) If a debt on an item which has already become a fixture is being refinanced, consent and subordination agreements will be signed before releasing loan funds to the creditor. In all other cases in which a security interest is being taken on an item that already has become a fixture, consent and subordination agreements will be signed no later than the time of loan closing.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before the financing state-

ment and security agreement covering the fixture have been executed, or before the financing statement is filed, or before the request for obligation of funds is signed by the loan approving official.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.68—1941.70 [Reserved]

§ 1941.71 Fees.

The borrower will pay all fees for filing or recording financing statements, mortgages, or other legal instruments and will pay all notary and lien search fees incident to loan transactions. Payment will be made from personal funds or from the proceeds of the loan. Whenever FmHA employees accept cash to pay for filing or recording fees or for the cost of making a lien search, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is not received by the Government as a payment on the borrower's debt, but is accepted only for paying the recording, filing, or lien search fees on behalf of the borrower.

§§ 1941.72—1941.74 [Reserved]

§ 1941.75 Retention and use of security agreements.

Original executed security agreements will not be altered or destroyed, and will remain in the case file when new security agreements are taken. Changes in security property will be noted *only* on the work copy. When an additional security agreement covering all collateral for the debt is taken, the work copy of the previous security agreement may be destroyed.

§§ 1941.76—1941.78 [Reserved]

§ 1941.79 Future advance and after-acquired property clauses.

The future advance and after-acquired property clauses of security agreements will be considered valid in all respects in UCC States unless otherwise provided in a State supplement.

(a) *Future advance clause.* A properly prepared, executed, and filed or recorded FmHA financing statement and a properly prepared and executed FmHA security agreement give FmHA a security interest in the property described. This security interest covers future loans, advances, and expenditures, as well as any other FmHA debts evidenced by notes and any advances or expenditures for debts evidenced by such notes. However, when a borrower's indebtedness is paid in full, a new security agreement must be taken in all cases to secure an initial loan made following the payment in full.

(b) *After-acquired property clause.* After a security interest is acquired in certain property, any property (except fixtures) acquired which is of the same type as that described in the financing statement and security agreement will also serve as security for the debt. The after-acquired property clause in the security agreement will encumber crops grown on the land described in the security agreement and financing statement, provided the crops are planted or otherwise become growing crops within 1 year of the execution date of the security agreement, or within such other period as provided in a State supplement. FmHA after-acquired security interests take priority over other security interests perfected after the FmHA financing statement is filed, except as stated in § 1941.60.

(c) *State supplements.* A State supplement concerning future advance and after-acquired property clauses will set forth requirements for filing or recording security instruments in that State. This will assist County Supervisors in other States who request such information in accordance with § 1941.57(g). A State supplement will also be issued when OGC determines that it is needed to reflect any amendments made to a State's UCC.

§§ 1941.80—1941.83 [Reserved]

§ 1941.84 Title clearance and closing requirements.

(a) For loans over $10,000 (or EM loans over $25,000), title clearance is required when real estate is taken as security.

(b) For loans of $10,000 or less (or EM loans of $25,000 or less), and loans for which real estate is taken as security, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the estate security, a title search will be required.

(c) When real estate is taken as security, title clearance and loan closing requirements will be carried out in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

(d) If any prior liens against the real estate offered as security contain provisions (such as future advance clauses not limited to a specific amount) that could jeopardize either the security position of the Government or the applicant's ability to meet the obligations of the prior liens and FmHA loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions.

(e) If a lien is to be taken on real estate which is already subject to a lien, and if State law allows a prior lienholder to foreclose on a loan (under power of sale or otherwise) without notifying a junior lienholder of the foreclosure proceedings, the prior lienholders must agree, in writing, to give FmHA advance notice of all foreclosure proceedings and of any assignment of the mortgage.

(f) Each real estate lien will be taken on Form FmHA 427-1 (State), "Real Estate Mortgage for _____," unless a State supplement requires the use of another form.

(g) If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the purchase contract holder must agree, in writing, that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate. If necessary, the applicant will negotiate with the purchase contract holder to arrive at a new contract without any provisions objectionable to either FmHA or the lender.

(3) If a satisfactory contract of sale cannot be negotiated or if the purchase contract holder refuses to agree to apply the insurance proceeds toward the repair or replacement of the real estate and wants to retain some of the proceeds as an extra payment on the balance owned, the applicant will make every effort to refinance the existing purchase contract.

(4) The purchase contract must not be subject to summary cancellation on default and must not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(5) The contract holder must agree, in writing, to give the Government notice of any breach by the purchaser, and must also agree to give the Government the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on the day the Government receives the written notice of the breach.

[51 FR 13448, Apr. 21, 1986]

§§ 1941.85—1941.87 [Reserved]

§ 1941.88 Insurance.

Insurance for property, public liability, and crops should be obtained before loan or at the time of closing.

(a) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA requires and "Assignment

of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" is taken by FmHA, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, but not withstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment.

(b) *Chattels.* Borrowers will be encouraged to carry insurance on chattel property that serves as security for a loan and on other chattel and real property, in order to protect themselves against losses resulting from accidents, theft and other hazards existing in the area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and other inventory centrally stored over an extended period of time.

(c) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, applied to debts secured by prior liens, or applied to the OL loan being made.

(d) *Public liability and property damage.* Borrowers, including youths, receiving loans for farm, recreational, or nonfarm enterprises should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(e) *Mortgage clause.* When insurance is required on property serving as security, Form FmHA 426-2, "Property Insurance Mortgage Clause (Without Contribution)," or a standard mortgage clause in general use in the area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration) as mortgagee or secured party.

[43 FR 55883, Nov. 29, 1978, as amended at 47 FR 33486, Aug. 3, 1982; 53 FR 35691, Sept. 14, 1988]

§§ 1941.89—1941.91 [Reserved]

§ 1941.92 Check delivery.

The County Supervisor will receive and deliver loan checks. On receipt of a loan check, and after arrangements have been completed for loan closing, the applicant will be promptly notified on Form FmHA 440-8, "Notice of Check Delivery." Loan funds will be disbursed in accordance with Part 1803 of this chapter (FmHA Instruction 402.1).

§ 1941.93 [Reserved]

§ 1941.94 Supervised bank accounts.

If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter.

[53 FR 35692, Sept. 14, 1988]

§ 1941.95 [Reserved]

§ 1941.96 Changes in use of loan funds.

(a) *Approval of changes.* County Supervisors, or their delegates, are authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The change is consistent with authorities, policies and limitations for making loans, and

(2) The change will not adversely affect either the workings of an ongoing operation or the Government's interest.

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940-17, "Promissory Note," will not be revised. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431-2, "Farm and Home Plan," also on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

[43 FR 55883, Nov. 29, 1978, as amended at 45 FR 16166, Mar. 13, 1980; 53 FR 35692, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989]

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

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AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

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EXHIBIT B—TRANSMITTAL MEMORANDUM

Subpart A—Community Facility Loans

SOURCE: 50 FR 7296, Feb. 22, 1985, unless otherwise noted.

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for community facilities except fire and rescue facilities. This subpart applies to community facility loans for fire and rescue facilities only as specifically provided for in Subpart C of this Part 1942. The Farmers Home Administration (FmHA) shall cooperate fully with State and local agencies in making loans to assure maximum support to the State strategy for rural development. FmHA State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

(c) Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

(d) The County Office will normally be the entry point for preapplications and serve as a local contact point. However, applications will be filed with the District Office and loans will be processed to the maximum extent possible by the District Office staff. The applicant's governing body should designate one person to coordinate the activities of its engineer, architect, attorney, and any other professional employees and to act as contact person during loan processing. FmHA personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants and/or agents. The State Office staff will monitor Community Programs loan making and servicing, and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA regulations. The District Director will supply information on Community Program loan activity within the County Office service area to the County Supervisor at key points throughout the loan making process. As a minimum, the District Director should provide appropriate copies or notice to the County Office when the following actions occur:

(1) Form AD-622, "Notice of Preapplication Review Action," is issued.

(2) Project summary is completed.

(3) Letter of Conditions is issued.

(4) Applicant declines to execute Form FmHA 1942-46, "Letter of Intent To Meet Conditions."

(5) Applicant is notified of loan or grant approval.

(6) A loan is properly closed.

(7) A construction contract is awarded.

(8) A final inspection is completed.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 38908, Oct. 20, 1987; 52 FR 43725, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987; 53 FR 6785, Mar. 3, 1988; 54 FR 47196, Nov. 13, 1989]

§ 1942.2 Processing applications.

(a) *Preapplications.* (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, SF 424.2, "Application for Federal Assistance (For Construction)." The County Supervisor will assist applicants as needed in completing SF 424.2, and in filing written notice of intent and request for priority recommendation with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1901.352 (b) of Subpart H of Part 1901 of this Chapter). The County Supervisor will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for FmHA financing. Preapplications filed in the County Office will be forwarded immediately to the District Office. The applicant will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. The District Director will meet with the applicant, whenever appropriate, to discuss FmHA preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully review it. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of SF 424.2.

(iii) State intergovernmental review comments and recommendations (clearinghouse comments).

(iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(2) The State Director will review each SF 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of § 1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors with their assistance, should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lender representatives interested in receiving such referrals should be maintained.

(ii) The State Director shall maintain a working relationship with the State A-95 or other appropriate State agency and give full consideration to their comments when selecting preapplications to be processed.

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD-622.

(iv) Form AD-622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by FmHA, stating the results of the review action. The original will be signed and delivered to the applicant with a copy to the State Director.

(3) For preapplications eligible for FmHA funding which have the necessary priority to compete with similar preapplications, FmHA will issue Form AD-622 inviting an application containing the following statement:

> You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions.

(4) The following statement must be added to Form AD-622 when notifying

preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

> You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) to proceed.

(b) *Environmental review.* Environmental requirements will be documented in accordance with Subpart G of Part 1940 of this chapter and submitted to the State Director. Starting with the earliest discussions with prospective applicants or review of preapplications and continuing throughout application processing, environmental issues must be considered. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. Documentation of the appropriate environmental review should be completed as soon as possible; however, the State Director will ensure that the appropriate environmental review is completed prior to issuing the letter of conditions.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include SF 424.2, and related forms, materials, and information. The application will be assembled in accordance with Guide 15 of this subpart or State guides developed under § 1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form FmHA 1942-39, "Processing Check List (Other Than Public Bodies)," or Form FmHA 1942-40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conference to extend and update the processing checklist.

(d) *Review of decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

> The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(e) *Joint funding.* FmHA may finance projects jointly with funds from other sources, such as, commercial/

private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA to any applicant to whom FmHA is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by Section 125 of Pub. L. 95-334 (Section 347, Consolidated Farm and Rural Development Act, as amended).

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988; 54 FR 47197, Nov. 13, 1989; 55 FR 13503 and 15304, Apr. 11, 1990]

§ 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form FmHA 422-10, "Appraisal Report—Water and Waste Disposal Systems," may be used with appropriate supplements. Form FmHA 442-10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by § 1942.17 (g)(2)(iii)(B)(*2*), (g)(3)(iii)(B)(*2*), and (j)(4) of this subpart, may be prepared by the FmHA engineer/architect or, if desired by the State Director, some other qualified appraiser. The loan approval official may require an applicant to provide an appraisal prepared by an independent qualified appraiser; however, the loan approval official must determine that the appraised value shown in such reports reflects the present market value.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988]

§ 1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

§ 1942.5 Application review and approval.

(a) *Procedures for review.* Ordinarily FmHA staff review will proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and associated data are to be reviewed by the FmHA staff engineer or architect, as appropriate, as soon as available but prior to the District Director's completion of the project summary. During the review the District Director in all cases will make certain that no low income or minority community within the service area has been omitted or discouraged —rom participating in the proposed project. The District Director will also determine how the service area was defined to assure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The District Director will complete the project summary including written analysis and recommendations using either Form FmHA 1942-45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects," for utility type projects or Form FmHA 1942-43, "Project Summary—Community Facilities (Other than utility-type projects)," for all other types of projects. The District Director will prepare a draft letter of conditions listing all the requirements which the applicant must agree to meet within a specific time.

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, debt collection policies execution of Form FmHA 1910-11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts," organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A-128 and A-110), adoption of Form FmHA 1942-47, "Loan Resolution (Public Resolution)," for public bodies or Form FmHA 1942-9, "Loan Resolution (Security Agreement)," for other than public bodies, closing instructions, and other requirements.

(ii) Each letter of conditions will contain the following paragraphs:

> This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in the project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.
>
> This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $——.
>
> If FmHA makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to FmHA as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing.
>
> Please complete and return the attached Form FmHA 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

(iii) District Directors may add the following:

> If the conditions set forth in this letter are not met within ——— days from the date hereof, FmHA reserves the right to discontinue the processing of the application.

(2) The FmHA staff engineer or architect, as appropriate, will include a written analysis and recommendations on Form FmHA 1942-43 or Form FmHA 1942-45.

(3) The Chief, Community Programs or Community and Business Programs will review the assembled application and include on Form FmHA 1942-43 or Form FmHA 1942-45 written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) *Project requiring National Office review.* Prior National Office review is required for certain proposals (See Subpart A of Part 1901 of this chapter).

(1) The District Director should assemble applications for the National Office review in the following order from top to bottom and forward them to the State Director for review and recommedation prior to submission to the National Office:

(i) Transmittal memorandum including:

(A) Recommendation.

(B) Date of expected obligation.

(C) Any unusual circumstances.

(ii) Copies of the following:

(A) Proposed letter of conditions.

(B) Applicable State Intergovernmental review comments (FmHA Instruction 1940-J, available in any FmHA office).

(C) Forms FmHA 1942-45 or FmHA 1942-43 (including the required copy of Forms FmHA 1942-7, "Operating

Budget," and FmHA 1942-14, "Association Project Fund Analysis").

(D) Form FmHA 1942-51, "Water and Waste Disposal Grant Determination," if applicable.

(E) Preliminary architectural or engineering report.

(F) Form FmHA 442-3, "Balance Sheet," or a financial statement or audit that includes a balance sheet.

(G) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of § 1942.17 (g)(2)(iii) and (g)(3)(iii) of this subpart, financial information for the last five years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available and the following order of preference:

(*1*) Complete audits;

(*2*) Unaudited financial statements including balance sheets and statements of income and expenses;

(*3*) Lists of income and expenses.

(H) For other essential community facility loans secured under paragraph (b)(1)(ii)(G) of this section, submit a detailed explanation of the proposed security; evidence that the application cannot be processed and the loan secured under paragraph (b)(1)(ii)(G) of this section; evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services and the results, and comments of the Regional Attorney concurring in the applicants' legal authority to give the proposed security.

(I) Financial Feasibility Report when required by § 1942.17 (h)(1).

(J) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant.

(K) Other forms and documents on which there are specific questions.

(L) Environmental impact analysis and documentation.

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b)(1)(ii) of this section, should be available.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the District Director or other FmHA representative designated by State Director, and delivered to the applicant. Upon signing the letter of conditions, the District Director will send two copies of the letter of conditions and two copies of Forms FmHA 1942-43 or FmHA 1942-45 to the State Director. The State Director will immediately send one copy of Forms FmHA 1942-43 or FmHA 1942-45 (including the required copy of Forms FmHA 1942-7 and FmHA 1942-14) and a copy of the letter of conditions to the National Office, Attention: Water and Waste Disposal Division or Community Facilities Division, as appropriate. The District Director, with assistance as needed from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form FmHA 1942-46.

(1) The letter of conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form FmHA 1942-46, the District Director will immediately notify the State Director and provide complete information as to the reasons for such declination.

(3) If the applicant executes Form FmHA 1942-46, the District Director will forward two copies of the completed Form FmHA 1942-14; and the completed and executed original, a signed copy and an unsigned copy of Form FmHA 1940-1 to the State Director.

(d) *Loan approval and obligating funds.* Loans will be approved under this subpart and Subpart A of Part 1901 of this chapter (available in any FmHA office). The loan will be considered approved on the date the signed copy of Form FmHA 1940-1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form FmHA 1940-1, authorizing funds to be reserved, may be executed by the loan approval official providing

the applicant has the legal authority to contract for a loan and to enter into required agreements and has signed Form FmHA 1940-1.

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940-1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the FmHA Field Office terminal system after signing Form FmHA 1940-1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA 1940-1.

(4) The obligation date and date the applicant is notified of loan and/or grant approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(5) Immediately after verifying that funds have been reserved, utilizing the FmHA Field Office terminal system status inquiry function, the State Director or designee will notify by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015-C, "Announcement of Approval of Loans, Grants, or Guaranteed Loans for Rural Project," (available in any FmHA State Office).

(6) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant on the obligation date a copy of Form FmHA 1940-1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date the interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at that time on the original of Form FmHA 1940-1 and include it as a permanent part of the District Office project file with a copy placed in the State Office file.

(7) If a transfer of obligation of funds is necessary, complete Form FmHA 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and process via the FmHA Field Office terminal system. An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(i) The substituted applicant is eligible to receive the assistance approved for the original applicant; and

(ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and

(iii) The need for and scope of the project and the purpose(s) for which FmHA funds will be used remain substantially unchanged.

[50 FR 7296, Feb. 22, 1985, as amended at 50 FR 33332, Aug. 19, 1985; 50 FR 43378, Oct. 25, 1985; 53 FR 6787, Mar. 3, 1988; 54 FR 47196-47197, Nov. 13, 1989]

§ 1942.6 Preparation for loan closing.

(a) *Obtaining closing instructions.* Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) *Verification of users and other funds.* (1) In connection with a loan for a utility type roject to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in a memorandum to the State Director.

(2) In all cases the availability and amounts of other funds to be used in the project will be verified by FmHA.

(c) *Initial compliance review.* An initial compliance review should be completed under Subpart E of Part 1901 of this chapter.

(d) *Ordering loan checks.* Checks will not be ordered until:

(1) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto; and

(2) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) *Multiple advances of FmHA funds.* When FmHA provides loan funds during the construction period using interim (temporary) instruments described in § 1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out in § 1942.19(e) of this subpart will be followed.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 53 FR 26589, July 14, 1988]

§ 1942.7 Loan closing.

Loans will be closed in accordance with the closing instructions issued by the OGC and § 1942.17(o) of this subpart and as soon as possible after receiving the check.

(a) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certificates.

(b) *Preparation of mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument.

(c) *Source of funds for insured loans.* All loans will be made from the Rural Development Insurance Fund (RDIF).

(d) *Unused funds.* Obligated funds planned for project development which remain after all authorized costs have been provided for will be disposed of in accordance with § 1942.17(p)(6) of this subpart. See Subpart B of Part 1951 of this chapter as to the method of returning loan and grant funds.

(e) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take appropriate actions outlined in FmHA Instruction 102.1 (available in any FmHA office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 102.1.

(f) *Supervised bank accounts.* Supervised bank accounts will be handled under Subpart A of Part 1902 of this chapter.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§ 1942.8 Actions subsequent to loan closing.

(a) *Mortgages.* Real estate or chattel mortages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(b) *Notes and bonds.* When the debt instrument is a promissory note or single instrument bond fully registered as to principal and interest, a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(c) *Multiple advances—bond(s).* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper righthand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office.

(d) *Bond registration record.* Form FmHA 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed.

(f) *Material for State Office.* When the loan has been closed, the District Director will submit to the State Director:

(1) The complete docket; and

(2) A statement covering information other than the completion of legal documents showing what was done in carrying out loan closing instructions.

(g) *State Office review of loan closing.* The State Director will review the District Director's statement concerning loan closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the District Director, including the executed contract documents (if required by OGC) with the certification of the borrower's attorney, along with a statement by the State Director that all administrative requirements have been met, will be referred to OGC for post-closing review. OGC will review the submitted material to determine whether all legal requirements have been met. OGC's review of FmHA's standard forms will be only for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the opinion from OGC. When the opinion from OGC is received, the State Director will advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(h) *Safeguarding bond shipments.* FmHA personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018-E (available in any FmHA office), whenever they mail or deliver these items.

(i) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the District Office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§ 1942.9 Planning, bidding, contracting, and constructing. [See §§ 1942.17(p) and 1942.18]

(a) *Review of construction plans and specifications.* All plans and specifications will be submitted as soon as available to the State Office for review and comments.

(b) *Contract approval.* The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The use of a contracting method under § 1942.18(l) of this subpart exceeding $100,000 must be concurred in by the National Office. Procurement under § 1942.18(l) of this subpart will not be considered when an FmHA grant is involved. When an applicant requests such concurrence, the State Director will submit the following to the National Office:

(1) State Director's and FmHA engineer/architect's comments and recommendations, and when noncompetitive negotiation is proposed, submit an evaluation of previous work of the proposed construction firm.

(2) Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents.

(3) Copy of owner's written request and description of the procurement method proposed.

(4) Copy of the proposed contract.

(c) *Bid irregularities.* Any irregularities in the bids received or other matters pertaining to the contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(d) *Noncompliance.* State Directors, upon receipt of information indicating borrowers or their officers, employees, or agents are not performing in compliance with § 1942.18(j)(1) of this subpart, may request the Regional Office of the Inspector General (OIG) to investigate the matter and provide a report. The State Director is responsible for resolving the issue.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§§ 1942.10—1942.11 [Reserved]

§ 1942.12 Loan cancellation.

Loans which have been approved and obligations which have been established may be canceled before closing as follows:

(a) Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The District Director or State Director may prepare and execute Form FmHA 1940-10 in accordance with the Forms Manual Insert (FMI). If the check has been received or is subsequently received in the District Office, the District Director will return it as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

(b) *Notice of cancellation.* If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940-10. Any application for title insurance, if ordered, will be canceled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The District Director may provide the borrower's attorney and engineer/architect with a copy of the notification to the applicant. The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reasons for such cancellation.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 26589, July 14, 1988; 54 FR 39727, Sept. 28, 1989]

§ 1942.13 Loan servicing.

Loans will be serviced under Subpart E of Part 1951 of this chapter.

§ 1942.14 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.15 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities in this subpart and for issuing State supplements redelegating authorities. Loan and grant approval authority is in Subpart A of Part 1901 of this chapter. Except for loan and grant approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.16 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006-B (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in § 1942.18 of this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or start of construction.

§ 1942.17 Community facilities.

(a) *General.* This section includes information and procedures specifically designed for use by applicants including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal or other services related to application processing and facility planning and development. This section is made available as needed for such use. It includes FmHA policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. FmHA shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas. State and substate A-95 agencies may recommend priorities for applications. FmHA will fully consider all A-95 agency review comments and priority recommendations in selecting applications for funding.

(b) *Applicant eligibility.* Facilities financed by FmHA must primarily serve rural residents. For water or waste disposal facilities the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States. For essential community facilities the term "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants according to the latest decennial census of the United States. Facilities must be located in rural areas except for utility-type services, such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, FmHA funds may be used to finance only that portion serving rural users, regardless of facility location. Loans for water or waste disposal facilities will not be made to any city or town with a population in excess of 10,000. Loans for essential community facilities will not be made to any city or town with a population in excess of 20,000. Assistance to areas or communities adjacent to, or closely associated with, non-rural areas is limited by § 1942.17(c) of this subpart.

(1) *Type of applicants*—(i) *Public bodies* such as municipalities, counties, districts, authorities, or other political subdivisions of a State.

(ii) *Organizations operated on a not-for-profit basis* such as associations, cooperatives, and private corporations. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval.

(A) Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve the local residents. Ties may be evidenced by items such as:

(*1*) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community;

(*2*) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or, substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(iii) *Indian tribes* on Federal and State reservations and other Federally recognized Indian tribes.

(2) *Credit elsewhere.* Applicants must certify in writing and FmHA shall determine and document that the applicant is unable to finance the proposed project from their own resources or

through commercial credit at reasonable rates and terms.

(3) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in Guide 24 of this subpart (available in any FmHA office). Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(4) *Refinancing FmHA debt.* FmHA shall require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(c) *Priorities*—(1) *Truly rural areas.* FmHA program assistance will be directed toward truly rural areas and rural communities. Normally, priority will not be given to preapplications for projects that will serve other than truly rural areas. Truly rural areas are areas other than densely settled areas or communities adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water or waste disposal assistance, or 20,000 residents for essential community facility assistance. When determining whether a rural area or rural community is adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water and waste disposal or 20,000 residents for essential community facility assistance, minor open spaces such as those created by physical or legal barriers, commercial or industrial development, parks, areas reserved for convenience or appearance, or narrow strips of cultivated land, will be disregarded. An area or community shall be considered adjacent to or closely related with a nonrural area when it constitutes for general, social and economic purposes a single community having a contiguous boundary.

(2) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, FmHA officials must consider the priority items met by each preapplication and the degree to which those priorities are met, and apply good judgement.

(i) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(ii) *State Office review.* All preapplications will be reviewed and scored and Form AD-622, "Notice of Preapplication Review Action," issued within the time limits in § 1942.2(a)(2)(iv) of this subpart. When considering authorizing the development of an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD-622 and advised of their appeal rights under Subpart B of Part 1900 of this chapter. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such preapplications. Such requests will be considered along with all others on hand.

(iii) *Selection priorities.* The priorities described below will be used by the State Director to rate preapplications. The priorities should be applied to water and waste disposal or community facilities preapplications as directed. The format found in Part I of Guide 26 of this subpart should be followed in scoring each preapplication. A copy of the score sheet should be placed in the case file for future reference.

(A) *Population priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated.

(*1*) The proposed project is located in a rural community having a population not in excess of 2,500—25 points.

(*2*) The proposed project is located in a rural community having a population not in excess of 5,500—20 points. (Points under this priority should not be assigned to a preapplication if points were assigned under paragraph (c)(2)(iii) (A)(*1*) of this section.)

(B) *Health priorities.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project is:

(*i*) Needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply—25 points.

(*ii*) Required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal system—25 points.

(*2*) Community Facility preapplication only. The proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard—25 points.

(C) *Income priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

(*1*) Less than the poverty line for a family of four, as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or less than 80 percent of the statewide nonmetropolitan median household income.—25 points.

(*2*) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income.—20 points.

(D) *Other factors.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents—10 points.

(*2*) Community Facilities preapplications only. The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)

(*i*) Public safety—10 points. (Examples include police services and fire, rescue and ambulance services as authorized by Subpart C of this Part 1942.

(*ii*) Health care—5 points. (Examples include clinics, nursing homes, convalescent facilities, and hospital projects designed to make the facility conform with life/safety codes, medicare and medicaid requirements, and minor expansions needed to meet the immediate requirements of the community. Points under this authority should not be awarded to a preapplication if points were awarded under § 1942.17(c)(2)(iii)(B)(*2*) of this subpart.)

(*3*) Water and Waste Disposal and Community Facilities preapplications.

(*i*) Applicant is a public body or Indian tribe—5 points.

(*ii*) Project is located in a "truly rural area" as described in § 1942.17(c)(1) of this subpart—10 points.

(*iii*) Amount of joint financing committed to the project is:

(*a*) 20% or more private, local or state funds except federal funds channeled through a state agency—10 points.

(*b*) 5%-19% private, local or state funds except federal funds channeled through a state agency—5 points.

(E) In certain cases the State Director may assign up to 15 points to a preapplication, in addition to those that may be scored under paragraphs (c)(2)(iii) (A) through (D), of this section. These points are primarily intended to address an unforeseen exigency or emergency, such as the loss of a community facility due to accident or natural disaster or the loss of joint financing if FmHA funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between FmHA's and other agencies' selection systems and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(iv) *Results of State Office review.* After completing the review, the State Director will normally select the eligible preapplications with the highest scores for further processing. In cases where preliminary cost estimates indicate that an eligible, high scoring preapplication is unfeasible or would require an amount of funding from FmHA that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the State Director may instead select the next lower scoring preapplication(s) for futher processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it. If it is found that there is no effective way to reduce costs, the State Director, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file when an eligible preapplication with a higher rating is not selected for further processing. The State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information with an authorization for the District Director to prepare and issue Form AD-622 in accordance with § 1942.2(a)(2)(iv) of this subpart. Priority will be given to those preapplications and applications for funding which meet criteria in § 1942.17(c)(2)(iii)(A) (*1*) or (*2*); and the criteria in § 1942.17(c) (2)(iii)(B)(*1*) (*i*) or (*ii*) or (B)(*2*) of this subpart.

(v) *Application development.* Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(vi) *Project obligations.* To ensure efficient use of resources, obligations should occur in a timely fashion throughout the fiscal year. Projects may be obligated as their applications are completed and approved.

(vii) *Requests for additional funding.* All requests for additional allocations of funds submitted to the National Office must follow the formats found in Parts I and II of Guide 26. In selecting projects for funding at the National Office level, additional points may be scored based on the priority assigned to the project by the State Office. These points will be scored in the manner shown below. Only the three highest priority projects can score points. In addition, the Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

Priority	Points
1	5
2	3
3	1

(viii) *Cost overruns.* A preapplication may receive consideration for funding before others at the State Office level or at the National Office level, if funds are not available in the State Office, when it is a subsequent request for a previously approved project which has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means.

(d) *Eligible loan purposes.* (1) Funds may be used:

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal, and other essential community facilities providing essential service primarily to rural residents.

(A) "Water or waste disposal facilities" include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(B) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including but not limited to:

(*1*) Health services;

(*2*) Community, social, or cultural services;

(*3*) Transportation facilities, such as streets, roads, and bridges;

(*4*) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(*5*) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing;

(*6*) Natural gas distribution systems; and

(*7*) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(C) "Otherwise improve" includes but is not limited to the following:

(*1*) The purchase of major equipment, such as solid waste collection trucks and X-ray machines, which will in themselves provide an essential service to rural residents;

(*2*) The purchase of existing facilities when it is necessary either to improve or to prevent loss of service;

(*3*) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared under § 1942.18(f) of this subpart.

(ii) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iii) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iv) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) of this section.

(A) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(B) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA.

(C) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(D) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(E) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(F) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(*1*) The debts being refinanced are a secondary part of the total loan;

(*2*) The debts are incurred for the facility or service being financed or any part thereof;

(*3*) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(G) Prepay costs for which FmHA grant funds were obligated provided there is:

(*1*) No conflict with the loan resolution, State statutes, or any other loan requirements; and

(*2*) Full documentation showing that:

(*i*) Loan funds will only be utilized on a temporary basis; and

(*ii*) All FmHA loan funds are restored at a later date for purpose(s) for which they were obligated.

(v) To pay obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request FmHA approval to pay such obligations. Such requests may be approved if FmHA determines that:

(A) Compelling reasons exist for incurring obligations before loan approval; and

(B) The obligations will be incurred for authorized loan purposes; and

(C) Contract documents have been approved by FmHA; and

(D) All environmental requirements applicable to FmHA and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material, or other liens that may attach to the security property. FmHA may authorize payment of such obligations at the time of loan closing. FmHA's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA authorization for paying such obligations shall be in writing. If construction is started without FmHA approval, post approval in accordance with this section may be considered.

(2) Funds may not be used to finance:

(i) On-site utility systems or business and industrial buildings in connection with industrial parks.

(ii) Facilities to be used primarily for recreation purposes.

(iii) Community antenna television services or facilities.

(iv) Electric generation or transmission facilities or telephone systems, except as provided in paragraph (d)(1)(i)(B)(*4*), or (d)(1)(i)(B)(*5*) of this section; or extensions to serve a particular essential community facility as provided in paragraph (d)(1)(ii) or (d)(1)(iii) of this section.

(v) Facilities which are not modest in size, design, and cost.

(vi) Loan or grant finder's fees.

(vii) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, Pub. L. 97-348.

(viii) New combined sanitary and storm water sewer facilities.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public use and primarily serve rural residents.

(1) Utility-type service facilities will be installed so as to serve any user within the service area who desires service and can be feasibly and legally

served. Applicants and borrowers must obtain written concurrence of the FmHA prior to refusing service to such user. Upon failure to provide service which is reasonable and legal, such user shall have direct right of action against the applicant/borrower. A notice of the availability of this service should be given by the applicant/borrower to all persons living within the area who can feasibly and legally be served by the phase of the project being financed.

(i) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate notification.

(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potent user will be afforded an opportunity to request service by signing a Users Agreement. Those declining service will be afforded an opportunity to sign a statement to such effect. FmHA has guides available for these purposes in all FmHA offices.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin.

(3) This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and those families living in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(iii) Extending services to industrial areas when service is made available to users located along the extensions.

(4) The State Director will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (i.e., water or waste disposal) will be remedied by the owner on or before completion of the project that includes FmHA funding. Inequities are defined as flagrant variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions, as determined by the State Director, do not necessarily constitute inequities.

(5) Before a loan is made to an applicant other than a public body, for other than utility type projects, the articles of incorporation or loan agreement will include a condition similar to the following:

> In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more nonprofit corporations or public bodies as may be selected by the board of directors of this corporation and approved by at least 75 percent of the users or members to be used for, and devoted to, the purpose of a community facility project or other purpose to serve the public welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, directors, stockholders, or others having financial or managerial interest in the corporation either for the reimbursement of any sum subscribed, donated or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

(f) *Rates and terms*—(1) *General.* Each loan will bear interest at the rate prescribed in FmHA Instruction 440.1, Exhibit B (available in any FmHA office). The interest rates will be set by FmHA at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one per centum. For each loan, the basis for determining what interest rate is appropriate will be completely documented on Form FmHA 1942-43 or Form FmHA 1942-45. The applicant may submit a written request prior to loan closing that the interest rate charged on the loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of FmHA funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval.

(2) *Poverty line rate.* The poverty line interest rate will not exceed five per centum per annum. It will apply to loans for which the loan approval official determines both the following condition exist:

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bonafide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and

(ii) The median household income of the service area is below the poverty line for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 100 percent of the nonmetropolitan median household income of the State.

(4) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (f)(2) or (f)(3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

(5) *Prime farmland.* For essential community facilities loans, the rate indicated by paragraphs (f)(2), (f)(3) or (f)(4) of this section will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with FmHA Instruction 440.1, Exhibits B and J (available in any FmHA office).

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs and other places.

(7) *Repayment terms.* Loans will ordinarily be scheduled for repayment on terms similar to those used in the State for financing such facilities but

in no case shall they exceed the useful life of the facility or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA funds are used in connection with an FmHA loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an FmHA loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the FmHA is jointly financing with another lender, the FmHA payments of principal and interest should approximate amortized installments.

(i) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to:

(A) Postpone the levying of taxes or assessments.

(B) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(C) Create reserves for normal operation and maintenance.

(D) Make any capital improvements except those approved by FmHA determined to be essential to the repayment of the loan or to the obtaining of adequate security thereof.

(E) Accelerate the payment of other debts.

(ii) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. Monthly payments will be required if consistent with the foregoing, and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(g) *Security.* Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of FmHA during the repayment period of the loan. Specific requirements for security for each loan will be included in a letter of conditions.

(1) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with FmHA taking another type. For projects utilizing joint financing with the same security to be shared by FmHA and another lender, FmHA will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the National Office:

(i) *Terms.* It is not necessary for loans to have the same repayment terms to meet the parity requirements. Loans made by other lenders involved in joint financing with FmHA for facilities should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(ii) *Use of trustee or other similar paying agent.* The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to FmHA. A trustee or other similar paying agent will not normally be used for the FmHA portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include FmHA funds must be clearly specified by written agreement and approved by the FmHA State Director and Regional Attorney. FmHA must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(iii) *Regular payments.* In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(iv) *Disposition of Property.* Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount loaned, but not to exceed their respective outstanding balances; provided, however, funds obtained from such sale or liquidation for a project that included FmHA grant funds will be apportioned as may be required by the grant agreement.

(v) *Protective advances.* Protective advances are payments made by a lender for items such as insurance or taxes, to protect the financial interest of the lender, and charged to the borrower's loan account. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

(2) *Public bodies.* Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by borrower's documents, resolutions, and ordinances.

(i) Utility-type facilities such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured by:

(A) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(B) Pledges of taxes or assessments; and/or

(C) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interest, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds; and/or

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time residents and facility costs result in a higher than reasonable rate for such full-time residents the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes, or assessments for public bodies or other organizations having the authority to issue or pledge such taxes, or assessments.

(ii) *Solid waste projects* will be secured by bonds pledging solid waste disposal revenue, only when the revenue pledged includes that from the solid waste project plus revenue from other facilities of the applicant with tie-in enforcement rights, or by the taxing power of participating local governments.

(iii) *Other essential community facilities* other than utility type, such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) General obligation bonds.

(*2*) Assessments.

(*3*) Bonds which pledge other taxes.

(*4*) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan.

(*5*) Assignment of assured income which will be available for the life of the loan, from such sources as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*6*) Liens on real and chattel property when legally permissible and an assignment of the borrowers income from applicants who have been in ex istence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for five years immediately prior to loan application.

(*7*) Liens on real and chattel property when legally permissible and an assignment of income from an organization receiving Health and Human Services (HHS) operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration, U.S. Department of Agriculture" (see FmHA Instruction 2000-T, available in any FmHA office.)

(*8*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*9*) When the applicant cannot meet the criteria in paragraph (g)(2)(iii)(A) (*1*) through (*8*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(B) Real estate and chattel property taken as security in accordance with paragraphs (g)(2)(iii)(A) (*6*) through (*9*) of this section:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or chattel property.

(C) When security is not available in accordance with paragraphs (g)(2)(iii)(A) (*1*) through (*5*) of this section and State law precludes securing the loan with liens on real or chattel property, the loan will be secured in the best manner consistent with State law and customary security taken by private lenders in the State, such as revenue bonds, and any other security the loan approval official determines necessary for a sound loan. Such loans will otherwise meet the requirements of (g)(2)(iii)(A) (*6*) through (*9*) of this section as appropriate.

(3) *Other-than-public bodies.* Loans to other-than-public body applicants will be secured as follows:

(i) Utility-type facilities eligible for FmHA assistance under paragraph (d) of this section such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

(A) Assignments of borrower income will be taken and perfected by filing, if legally permissable; and

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official determines that the interest of FmHA otherwise is secured adequately, the lien requirement may be omitted as to such land rights.

(C) When the loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the loan approval official determines that the loan is adequately secured.

(D) Other security. Promissory notes from individuals, stock or membership subscription agreements, individuals member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to FmHA as additional security in any case in which the interest of FmHA will not be otherwise adequately protected.

(E) In those cases where there is a substantial number of other than full time residents and facility costs result in a higher than reasonable rate for such full time residents, the loan will be secured by an assignment or pledge of general obligation bonds, taxes or assessments from public bodies or other organizations having authority to issue bonds backed by taxes or assessments.

(ii) *Solid waste projects* will be secured by a pledge of solid waste disposal revenue, only when the revenue pledged includes that from the solid waste project plus revenue from other facilities of the applicant with tie-in enforcement rights, or by the taxing power of participating local governments.

(iii) *Essential community facilities* other than utility type such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) An assignment of assured income that will be available for the life of the loan, from sources such as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*2*) Liens on real and chattel property with an assignment of income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for at least the five years immediately prior to loan application.

(*3*) Liens on real and chattel property and an assignment of income from an organization receiving HHS operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration U.S. Department of Health and Human Services and Farmers Home Administration, U.S. Department of Agriculture" (see FmHA Instruction 2000-T, available in any FmHA office

(*4*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*5*) When the applicant cannot meet the criteria in paragraphs (g)(3)(iii)(A) (*1*) through (*4*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(*6*) Additional security may be taken as determined necessary by the loan approval official.

(B) Real estate and chattel property taken as security:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or the chattel property.

(h) *Economic feasibility requirements.* All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA staff and approval official.

(1) *Financial feasibility reports.* All applicants will be expected to provide a financial feasibility report prepared by a qualified firm or individual. These financial feasibility reports will normally be:

(i) Included as part of the preliminary engineer/architectural report using Guides 6 through 10 as applicable; or

(ii) Prepared by a qualified firm or individual not having a direct interest in the management or construction of the facility using Guide 5 when:

(A) The project will significantly affect the applicant's financial operations and is not a utility-type facility but is dependent on revenues from the facility to repay the loan; or

(B) It is specifically requested by FmHA.

(2) *Applicants for loans for utility-type facilities* dependent on users fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions or improvements to existing systems, consideration should be given to the following:

(A) An estimated number of maximum initial users should not be used when setting user fees and rates since it may be several years before all residents in the community will need the services provided by the system. In establishing rates a realistic number of initial users should be employed.

(B) User agreements from individual vacant property owners will not be considered when determining project feasibility unless:

(*1*) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(*2*) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the Farmers Home Administration; and

(*3*) Such guarantee will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis.

(C) Income from other vacant property owners will be considered only as extra income.

(ii) Realistic user estimates will be established as follows:

(A) Meaningful potential user cash contributions. Potential user cash contributions are required except:

(*1*) For users presently receiving service, or

(*2*) Where FmHA determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

(*3*) Where State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(B) The amount of cash contributions required in paragraph (h)(2)(i)(A) of this section will be set by the applicant and concurred in by FmHA. Contribtions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a requirement of FmHA under this section. However, borrowers do have an additional responsibility relating to generating sufficient revenues as set forth in paragraph (n)(2)(iii) of this section.

(C) Enforceable user agreement. Except for users presently receiving service, an enforceable user agreement with a penalty clause is required unless State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances.

(iii) In those cases where all or part of the borrower's debt payment revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and approval by FmHA before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(A) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users at least three weeks in advance of the date service will be available, stating the date users will be expected to have their connections completed and the date user charges will begin.

(B) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies, or local contractors.

(C) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by FmHA prior to loan closing.

(3) *Utility-type facilities for new developing communities or areas.* Developers are normally expected to provide utility-type facilities in new or developing areas and such facilities shall be installed in compliance with appropriate State statutes and regulations. FmHA financing will be considered to an eligible applicant in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of an area development plan; and loan repayment can be assured by:

(i) The applicant already having sufficient assured revenues to repay the loan; or

(ii) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in paragraph (h)(2)(i)(B) of this section; or

(iii) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(iv) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(v) The loan is to a public body evidenced by a pledge of tax assessments; or

(vi) The user charges can become a tax lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

(i) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State or local taxes, special reserves will be established and maintained for the protection of the borrower's assessment lien.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve to provide for a total reserve in an amount at least equal to one average loan installment. It is also expected the ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(j) *General requirements*—(1) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing except that the State Director may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(i) The organization is well established and is operating with a sound financial base; or

(ii) For utility-type projects the members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when State statutes or local ordinances require mandatory use of the facility.

(2) *Planning, bidding, contracting, constructing.* (See § 1942.18).

(3) *Insurance and fidelity bonds.* The purpose of FmHA's insurance and fidelity bond requirements is to protect the government's financial interest based on the facility financed. The requirements below apply to all types of coverage determined necessary. The National Office may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant/borrower and will not adversely affect the government's interest.

(i) *General.* (A) Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the applicant/borrower and not that of FmHA to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by FmHA shall normally not exceed those proposed by the applicant/borrower if the FmHA loan approval or servicing official determines that proposed coverage is adequate to protect the government's financial interest. Applicants/borrowers are encouraged to have their attorney, consulting engineer/architect, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions. If the FmHA official and the applicant/borrower cannot agree on the acceptability of coverage proposed, a decision will be made by the State Director.

(C) The use of deductibles, i.e., an initial amount of each claim to be paid by the applicant/borrower, may be allowed by FmHA providing the applicant/borrower has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Borrowers must provide evidence to FmHA that adequate insurance and fidelity bond coverage is being maintained. This may consist of a listing of policies and coverage amounts in year-end reports submitted with management reports required under § 1942.17(q)(2) or other documentation. The borrower is responsible for updating and/or renewing policies or coverage which expire between submissions to FmHA. Any monitoring of insurance and fidelity bond coverage by FmHA is solely for the benefit of FmHA, and does not relieve the applicant/borrower of its obligation under the loan resolution to maintain such coverage.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. An exception may be granted by the State Director when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected.

(A) The amount of coverage required by FmHA will normally approximate the total annual debt service requirements for the FmHA loans.

(B) Form FmHA 440-24, "Position Fidelity Schedule Bond" may be used. Similar forms may be used if determined acceptable to FmHA. Other types of coverage may be considered acceptable if it is determined by FmHA that they fulfill essentially the same purpose as a fidelity bond.

(iii) *Insurance.* The following types of coverage must be maintained in connection with the project if appropriate for the type of project and entity involved:

(A) Property insurance. Fire and extended coverage will normally be maintained on all structures except as noted in paragraphs (j)(3)(iii)(A)(*1*) and (*2*) below. Ordinarily, FmHA should be listed as mortgagee on the policy when FmHA has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(*1*) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(*2*) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) Liability and property damage insurance, including vehicular coverage.

(C) Malpractice insurance. The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) Flood insurance. Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(E) Worker's compensation. The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(4) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquis-

tion of all property rights necessary for the project and will determine that prices paid are reasonable and fair. FmHA may require an appraisal by an independent appraiser or FmHA employee.

(i) *Title for land, rights-of-way, easements, or existing facilities.* The applicant must certify and provide a legal opinion relative to the title to rights-of-way and easements. Form FmHA 442-21, "Rights-of-Way Certificate," and Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used.

(A) *Rights-of-way and easements.* Applicants are responsible for and will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. Form FmHA 442-20, "Right-of-Way Easement," may be used. When a site is for major structures for utility-type facilities such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the applicant to obtain and record such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and give FmHA the required security.

(B) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form FmHA 427-9, "Preliminary Title Opinion," and Form FmHA 427-10, "Final Title Opinion," may be used to provide the required title opinions. If other forms are used they must be reviewed and approved by FmHA and OGC.

(*1*) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide FmHA a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to FmHA prior to requesting closing instructions. FmHA will be provided a title insurance policy which will insure FmHA's interest in the property without any title defects or restrictions which have not been waived by FmHA.

(*2*) The loan approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. If the District Director is the loan approval official and is unable to waive the defect or restriction, the title opinion or title insurance binder will be forwarded to the State Director. If the State Director, with the advice of the OGC, determines that the defect or restriction cannot be waived, the defect or restriction must be removed.

(ii) *Water rights.* When legally permissible, an assignment will be taken on water rights owned or to be acquired by the applicant. The following will be furnished as applicable:

(A) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(B) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(iii) *Land purchase contract:* (A) A land purchase contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(*1*) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(*2*) The applicant cannot obtain the land through condemnation.

(*3*) There are not other suitable sites available.

(*4*) National Office concurrence is obtained in accordance with paragraph (j)(4)(iii)(D)(*2*) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other costs needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay the FmHA loan. The contract must provide that if the purchaser fails to make payment that FmHA will be given at least 90 days written notice with an option to cure the default before the contract can be cancelled, terminated or foreclosed. Then FmHA must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(*1*) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(*2*) The land purchase contract, the Regional Attorney's comments, and the State Director's recommendations must be submitted to the National Office for concurrence.

(*3*) The land purchase contract must be recorded.

(5) *Lease agreements.* Where the right of use or control of real property not owned by the applicant/borrower is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the applicant/borrower. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the FmHA loan approval official with the advice and counsel of the Regional Attorney, OGC, as to the legal sufficiency of such documents. A copy of the lease contract or agreement will be included in the loan docket.

(6) *Notes and bonds.* Notes and bonds will be completed on the date of loan closing except for the entry of subsequent multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The amount of each bond will ordinarily be in multiples of not less than $1,000.

(i) Form FmHA 440-22, "Promissory Note (Association or Organization)," will ordinarily be used for loans to nonpublic bodies.

(ii) § 1942.19 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(7) *Environmental requirements.* Environmental requirements will be documented by FmHA in accordance with Subpart G Part 1940 of this chapter. The applicant will provide any information required.

(8) *Health care facilities.* The applicant will be responsible for obtaining the following documents:

(i) A statement from the responsible State agency certifying that the proposed health care facility is not inconsistent with the State Medical Facilities Plan.

(ii) A statement from the responsible State agency or regional office of the Department of Health and Services certifying that the proposed facility meets the standards in § 1942.18(d)(4).

(9) *Public information.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, will hold at least one public information meeting. The public meeting must be held after the preapplication is filed and not later than loan approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by FmHA. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify FmHA. The applicant will provide FmHA a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans which are needed to complete the financing of the project.

(10) *Service through individual installation.* Community owned water or waste disposal systems may provide service through individual installations or small clusters of users within the applicant's service area. When individual installations or small clusters are proposed, the loan approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(i) Applicants providing service through individual facilities must meet the eligibility requirements in § 1942.17(b).

(ii) FmHA must approve the form of agreement between the owner and individual users for the installation, operation and payment for individual facilities.

(iii) If taxes or assessments are not pledged as security, owners providing service through individual facilities must obtain security as necessary to assure collection of any sum the individual user is obligated to pay the owner.

(iv) Notes representing indebtedness owed the owner by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the loan, whichever is shorter. The interest rate will not exceed the interest rate charged the owner on the FmHA indebtedness.

(v) Owners providing service through individual or cluster facilities must obtain:

(A) Easements for the installation and ingress to and egress from the facility; and

(B) An adequate method for denying service in the event of nonpayment of user fees.

(11) *Funds from other sources.* FmHA loan funds may be used along with or in connection with funds provided by the applicant or from other sources. Since "matching funds" is not a requirement for FmHA loans, shared revenues may be used with FmHA funds for project construction.

(k) *Other Federal, State, and local requirements.* Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities. Proposals for facilities financed in whole or in part with FmHA funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(1) *Compliance with special laws and regulations.* Except as provided in paragraph (k)(2) of this section applicants will be required to comply with Federal, State, and local laws and any

regulatory commission rules and regulations pertaining to:

(i) Organization of the applicant and its authority to construct, operate, and maintain the proposed facilities;

(ii) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(iii) Land use zoning; and

(iv) Health and sanitation standards and design and installation standards unless an exception is granted by FmHA.

(2) *Compliance exceptions.* If there are conflicts between this subpart and state or local laws or regulatory commission regulations, the provisions of this subpart will control.

(3) *State Pollution Control or Environmental Protection Agency Standards.* Water and waste disposal facilities will be designed, installed, and operated in such a manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards. A certification from the appropriate State and Federal agencies for water pollution control standards will be obtained showing that established standards are met.

(4) *Consistency with other development plans.* FmHA financed facilities will not be inconsistent with any development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(5) *State agency regulating water rights.* Each FmHA financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed.

(6) *Civil Rights Act of 1964.* All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 and Subpart E of Part 1901 of this chapter, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by § 1901.202(e) of Subpart E of Part 1901 of this chapter.

(7) *Title IX of the Education Amendments of 1972.* No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or education activity receiving FmHA financial assistance except as otherwise provided for in the Education Amendments of Title IX. The FmHA State Director will provide guidance and technical assistance to carry out the intent of this paragraph.

(8) *Section 504 of the Rehabilitation Act of 1973.* Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving FmHA financial assistance.

(9) *Age Discrimination Act of 1975.* This Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This Act also applies to programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et. seq.). This Act does not apply to: (i) age distinctions contained in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body which provide benefits or assistance based on age; (ii) establish criteria for participation in age-related terms; (iii) describe intended beneficiaries or target groups in age-related terms; and, (iv) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training

Act of 1974 (CETA) (29 U.S.C. 801 et. seq.).

(l) *Professional services and contracts related to the facility*—(1) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: Engineer, architect, attorney, bond counsel, accountant, auditor, appraiser, and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to FmHA concurrence. Form FmHA 1942-19, "Agreement for Engineering Services," may be used when appropriate. Guide 20, "Agreement for Engineering Services (FmHA/EPA—Jointly Funded Projects)" may be used on projects jointly funded by FmHA and EPA. Guide 14 may be used in the preparation of the legal services agreement.

(2) *Bond counsel.* Unless otherwise provided by § 1942.19(b), public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to FmHA for review and approval. Management agreements should provide at least those items in Guide 24.

(4) *Fees.* Fees provided for in contracts or agreements shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the profession for similar work when FmHA financing is not involved.

(m) *Applying for FmHA loans*—(1) *Preapplication.* Applicants desiring loans will file SF 424.2 and comments from the appropriate A-95 clearinghouse agency normally with the appropriate FmHA County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

(2) *Preapplication review.* Upon receipt of the preapplication, FmHA will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of FmHA loan funds. The determination as to availability of other credit will be made after considering present rates and terms available for similar proposals (not necessarily based upon rates and terms available from FmHA); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges. In those cases where FmHA determines that loans at reasonable rates and terms should be available from commercial sources, FmHA will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for FmHA loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(3) *Incurring obligations.* Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by FmHA.

(4) *Results of preapplication review.* After FmHA has reviewed the preapplication material and any additional material that may be requested, Form AD-622 will be sent to the applicant. Ordinarily the review will not exceed 45 days.

(5) *Application conference.* Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with FmHA for an application conference to provide a basis for orderly application assembly. FmHA will provide applicants with a list of documents necessary to complete the application. Guide 15 may be used for this purpose. Applications will be filed with the District Office.

(6) *Application completion and assembling.* This is the responsibility of the applicant with guidance from FmHA. The applicant may utilize their professional and technical representatives or other competent sources.

(7) *Review of decision.* If an application is rejected, the applicant may request a review of this decision under Subpart B of Part 1900 of this chapter.

(n) *Actions prior to loan closing and start of construction*—(1) *Excess FmHA loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed before loan closing or the start of construction, whichever occurs first. In such cases applicable FmHA forms, the letter of conditions, and other items will be revised. Decreases in FmHA funds will be based on revised project costs and current number of users, however, other factors including FmHA regulations used at the time of loan/grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated.

(2) *Loan resolutions.* Loan resolutions will be adopted by both public and other-than-public bodies using Form FmHA 1942-47, "Loan Resolution (Public Bodies)," or Form FmHA 1942-9, "Loan Resolution (Security Agreement)." These resolutions supplement other provisions in this subpart. The applicant will agree:

(i) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

(ii) To comply with applicable local, State and Federal laws, regulations, and ordinances.

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility-type facilities, free service use may be permitted. If free services are extended no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

(iv) To acquire and maintain such insurance coverage including fidelity bonds, as may be required by the Go ernment.

(v) To establish and maintain suc books and records relating to the ope ation of the facility and its financi affairs and to provide for require audit thereof in such a manner as ma be required by the Government and t provide the Government without it request, a copy of each such audit an to make and forward to the Government such additional information anc reports as it may, from time to time require.

(vi) To provide the Government a all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

(vii) To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain FmHA's concurrence prior to refusing new or adequate services to such persons. Upon failure of the applicant to provide services which are feasible and legal, such person shall have a direct right of action against the applicant organization.

(viii) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other debt instruments or other such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

(ix) To refinance the unpaid balance, in whole or in part, of its debt upon the request of the Government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms.

(x) To provide for, execute, and comply with Form FmHA 400-4, "Assurance Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which is to be incorporated in or attached as a rider to each construction contract and subcontract in excess of $10,000.

(xi) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government as invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

(xii) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, and not to permit others to do so, without the prior written consent of the Government.

(xiii) Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to repay the debt to FmHA.

(xiv) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may:

(A) Declare the entire principal amount then outstanding and accrued interest, due and payable;

(B) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissiable source), incur and pay reasonable expenses for repair, maintenance and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default; and/or

(C) Take possession of the facility, repair, maintain and operate, or otherwise dispose of the facility. Default under the provisions of the resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association and default under any such instrument may be construed by the Government to constitute default hereunder.

(3) *Interim financing.* In all loans exceeding $50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds. Guide 1 or Guide 1a, as appropriate, may be used to inform the private lender of FmHA's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the FmHA loan would normally be closed, that is immediately prior to the start of construction. The FmHA loan should be closed as soon as possible after the disbursal of all interim funds. Interim financing may be for a fixed term provided the fixed term does not extend beyond the time projected for completion of construction. For this purpose, a fixed term is when the interim lender cannot be repaid prior to the end of the stipulated term of the interim instruments. When an FmHA Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total FmHA loan amount. Multiple advances may be used in conjunction with interim commercial financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The FmHA loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the FmHA loan is closed, the applicant will be required to provide FmHA with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that any suppliers and subcontractors have been paid. If such statements cannot be obtained, the loan may be closed provided:

(i) Statements to the extent possible are obtained;

(ii) The interest of FmHA can be adequately protected and its security position is not impaired; and

(iii) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims.

(4) *Obtaining closing instructions.* After loan approval, the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(5) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs paid prior to the required deposit time with applicant funds shall be appropriately accounted for.

(6) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with FmHA funds will present evidence of the commitment of these funds from such other sources. This evidence will be available before loan closing, or the start of construction, whichever occurs first. Ordinarily, the funds provided by the applicant or from other sources will be disbursed prior to the use of FmHA loan funds. If this is not possible, funds will be disbursed on a pro rata basis. FmHA funds will not be used to pre-finance funds committed to the project from other sources.

(o) *Loan closing*—(1) *Closing instructions.* Loans will be closed in accordance with the closing instructions issued by OGC.

(2) *Obtaining insurance and fidelity bonds.* Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first.

(3) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by FmHA will be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by FmHA.

(4) *Review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by the State Director and OGC.

(p) *Project monitoring and fund delivery during construction*—(1) *Coordination of funding sources.* When a project is jointly financed, the State Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

(2) *Multiple advances.* In the event interim commercial financing is not legally permissible or not available, multiple advances of FmHA loan funds are required. An exception to this requirement may be granted by the National Office when a single advance is necessitated by State law or public emergency. Multiple advances will be used only for loans in excess of $50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(i) § 1942.19 contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant may use Form FmHA 440-11, "Estimate of Funds Needed for 30 Day Period Commencing ______," to show the amount of funds needed during the 30-day period.

(iii) FmHA loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under paragraph (d)(1)(iv)(G) of this section. If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(A) Deposited in an appropriate borrower account, such as the debt service account, or

(B) Deposited in a supervised bank account under paragraph (p)(3)(i) of this section.

(3) *Use and accountability of funds*—(i) *Supervised bank account.* FmHA loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in Subpart A of Part 1902 of this chapter. When FmHA has a Memorandum of Understanding with another agency that provides for the use of supervised bank accounts, or when FmHA is the primary source of funds for a project and has determined that the use of a supervised bank account is necessary, project funds from other sources may also be deposited in the supervised bank account. FmHA shall not be accountable to the source of the other funds nor shall FmHA undertake responsibility to administer the funding program of the other entity. Supervised bank accounts should not be used for funds advanced by an interim lender.

(ii) *Other than supervised bank account.* If a supervised bank account is not used, arrangements will be agreed upon for the prior concurrence by FmHA of the bills or vouchers upon which warrants will be drawn, so that the payments from loan funds can be controlled and FmHA records kept current. If a supervised bank account is not used, use Form FmHA 402-2, "Statement of Deposits and Withdrawals," or similar form to monitor funds. Periodic reviews of nonsupervised accounts shall be made by FmHA at the times and in the manner as FmHA prescribes in the conditions of loan approval. State laws regulating the depositories to be used shall be complied with.

(iii) *Use of minority owned banks.* Applicants are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230 and is also available in all FmHA offices.

(4) *Development inspections.* The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with FmHA funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of FmHA and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in

accordance with plans and specifications. Each inspection will be recorded using Form FmHA 1924-12, "Inspection Report." The original Form FmHA 1924-12 will be filed in the project case folder and a copy furnished to the State Director. The State Director will review inspection reports and will determine that the project is being effectively monitored. The District Director is authorized to review and accept partial payment estimates prepared by the contractor and approved by the borrower, provided the consulting engineer or architect, if one is being utilized for the project, has approved the estimate and certified that all material purchased or work performed is in accordance with the plans and specifications, or if a consulting engineer or architect is not being utilized, the District Director has determined that the funds requested are for authorized purposes. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract.

(5) *Payment for construction.* Each payment for project costs must be approved by the borrower's governing body. Payment for construction must be for amounts shown on payment estimate forms. Form FmHA 1924-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the State Director or designee. However, the State Director or designee cannot require a greater reporting burden than is required by Form FmHA 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project costs, including construction partial payment estimates by FmHA, does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(6) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Applicant contributions will be considered as funds initially expended for the project. Funds remaining, with exception of applicant contributions, may be considered in direct proportion to the amount obtained from each source. Remaining funds will be handled as follows:

(i) *FmHA loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section and § 1942.358 of Subpart H of Part 1942 of this chapter, provided the use will not result in major changes to the facility design or project and that the purpose of the loan and/or grant remains the same.

(A) On projects that only involve an FmHA loan and no FmHA grant, funds that are not needed will be applied as an extra payment on the FmHA indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

(B) On projects that involve an FmHA grant, all remaining FmHA funds will be considered to be grant funds up to the full amount of the grant. Grant funds not expended under paragraph (p)(6)(i) of this section will be deobligated.

(ii) *Funds from other sources.* Funds remaining from other sources will be handled according to rules, regulations and/or the agreement governing their participation in the project.

(q) *Borrower accounting methods, management reporting and audits*—(1) *Accounting methods and records*—(i) *Method of accounting and financial statements.* Financial statements must be prepared on the accrual basis of accounting unless State statutes or regulatory agencies provide otherwise, or an exception is made by FmHA. This requirement is for accrual basis financial statements and not for accrual basis accounting systems. Organizations may keep their books on an accounting basis other than accrual and then make adjustments so that the financial statements are presented on the accrual basis.

(ii) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall provide to, and obtain approval from the FmHA loan approval official for its accounting and financial reporting system, including the agreement with its auditor, if an auditor is required.

(iii) *Records.* Form FmHA 1930-5, "Bookkeeping System—Small Borrower," may be used by small organizations as a method of recording and maintaining accounting transactions.

(iv) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the Comptroller General, or to their representatives.

(2) *Management reports.* These reports will furnish the management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial conditions. In those cases where revenues from multiple sources are pledged as security for an FmHA loan, two reports will be required; one for the project being financed by FmHA and one combining the entire operation of the borrower. In those cases where FmHA loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues will suffice. The following management data will be submitted by the borrower to the FmHA District Director.

(i) *Financial information.* (A) Form FmHA 442-2, "Statement of Budget, Income and Equity," which includes Schedule 1, "Statement of Budget, Income and Equity" and Schedule 2, "Projected Cash Flow."

(B) Prior to the beginning of each fiscal year, two copies, with data entered in column three only of Schedule 1, page one, "Annual Budget" and all of Schedule 2, will be submitted to the District Director. Twenty (20) days after the end of each of the first three quarters of each year, two copies with all information furnished on Schedule 1 will be submitted. For the fourth quarter of each year, submit together with the year-end financial requirements of paragraphs (q) (4) and (5) of this section. More frequent submissions may be required by FmHA when necessary. The submission dates to the District Director will be 90 days following year-end for audited statements and 60 days following year-end for unaudited statements. The fourth quarter submission may serve the dual purpose of management report and year-end financial requirement for Statement of Income.

(ii) *Additional information.* (A) A list of the names and addresses of all members of the governing body as appropriate, also indicating the officers and their terms of office, will be included with the other information required at the end of the year.

(B) Borrowers delinquent on payment to FmHA or experiencing financial problems, will develop a positive action plan to resolve financial problems. The plan will be reviewed with FmHA and updated at least quarterly. Guide 22 may be used for developing a positive action plan.

(3) *Substitute for management reports.* When FmHA loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State Director may authorize an annual audit to substitute for other management reports if the audit is received within 90 days following the period covered by the audit.

(4) *Audits.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars and FmHA requirements as specified in the separate sections of this subpart.

(i) *Audits based upon Federal financial assistance received.* The following requirements shall apply to audits of the years in which funds are received by the borrower.

(A) *Local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and OMB Circular A-128, with copies of the audits being forwarded by the borrower to the FmHA District Director and the appropriate Federal cognizant agency. The Circular is available in any FmHA office. For years in which an audit is not required by OMB Circular A-128, see paragraph (q)(4)(ii) of this section.

(*1*) *Cognizant agency.* (*i*) "Cognizant agency" means the Federal agency assigned by OMB to carry out the responsibilities described in OMB Circular A-128. Within the Department of Agriculture (USDA), OIG is designated as the cognizant agency.

(*ii*) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted. FmHA and the borrower shall coordinate all proposed audit plans with appropriate USDA OIG. A list of OIG contact persons is attached to FmHA Instruction 1942-A as Exhibit B (available in any FmHA office).

(*2*) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*i*) Local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit for that year in accordance with OMB Circular A-128.

(*ii*) Local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-128 or in accordance with FmHA audit requirements. This is an option of the local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA requirements, the audit shall be in accordance with paragraph (q)(4)(i)(B) of this section.

(*iii*) Local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A-128 audits and FmHA audit requirements. However, audits performed shall be governed by the requirements prescribed by State or local law or regulation.

(*iv*) Public hospitals and public colleges and universities may be excluded from OMB Circular A-128 audit requirements. However, in this case audits shall be made in accordance with paragraph (q)(4)(i)(B) of this section.

(*3*) *Fraud, abuse, and illegal acts.* If the auditor becomes aware of any indication of fraud, abuse, or illegal acts in FmHA financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the District Director.

(B) *Nonprofit organizations and others.* These organizations are to be audited in accordance with FmHA requirements and OMB Circular A-110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations." These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audits of paragraph (q)(4)(i)(A) of this section.

(*1*) Audits shall be annual unless otherwise prohibited and supplied to the FmHA District Director as soon as possible but in no case later than ninety (90) days following the period covered by the audit.

(*2*) *Audit requirements.* (*i*) Borrowers which receive $25,000 or more a year in Federal financial assistance shall have an audit. Also, refer to paragraph (q)(4)(ii) of this section for additional audit requirements.

(*ii*) Borrowers which receive less than $25,000 a year in Federal financial assistance shall be exempt from audits except for the audits based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section.

(*iii*) Indications of fraud, abuse and illegal acts shall be processed in accordance with paragraph (q)(4)(i)(A)(*3*) of this section.

(ii) *Audits based upon annual gross income.* The following annual gross income audit reguirements shall apply to all borrowers (local government, Indian tribes, and nonprofit organizations) for all years except the ones in which there is an audit requirement based upon the amount of Federal assistance received as required by paragraphs (q)(4)(i)(A) and (q)(4)(i)(B) of this section. Audits shall be on an annual basis unless otherwise prohibited and shall be supplied to FmHA as soon as possible but in no case later than 90 days following the period covered by the audit.

(A) *Gross annual income of $100,000 or more.* (*1*) Local governments and Indian tribes shall have audits made in accordance with State or local law or regulation or regulatory agency requirements. If no such requirements exist, audits shall be made in accordance with OMB Circular A-110 and paragraphs (q)(4)(i)(B)(*1*) and (*2*)(*iii*) of this section.

(*2*) All other organizations shall have audits in accordance with OMB Circular A-110 and paragraph (q)(4)(i)(B)(*1*) and (*2*)(*iii*) of this section.

(B) *Gross annual income of less than $100,000.* For borrowers that have a gross annual income of less than $100,000, the requirements for audits shall be at the discretion of the State Director. However, when audits are required, they shall be in accordance with paragraph (q)(4)(ii)(A) of this section.

(5) *Borrowers exempt from audits.* All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the FmHA with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442-2 and 442-3 may be used. For borrowers using Form FmHA 442-2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission.

(r) *FmHA actions for borrower supervision and servicing*—(1) *Management assistance and management reports.* Management assistance will be based on such factors as observation of borrower operations and review of the periodic financial reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with FmHA.

(i) *The District Director* is responsible for obtaining all management report data from the borrower, promptly reviewing it and making any necessary recommendations to the borrower within 40 calendar days. However, after receiving management reports for borrowers whose FmHA indebtedness exceeds $1,000,000 and for delinquent and problem case borrowers, the District Director will forward them with comments to the State Director for review.

(ii) *District Director reviews of borrower operations.* (A) A review of the borrower's total operational and management practices, including records and accounts to be maintained, will be made between the beginning of the ninth and the end of the eleventh full month of the first year of operation. A report will be made to the State Director by sending a copy of Form FmHA 442-4, "District Director Report." Earlier reviews will be made when needed to resolve operational and management problems that may arise.

(B) Subsequent reviews will be made for all delinquent and other borrowers having financial problems and reported to the State Director by a copy of Form FmHA 442-4. These borrowers will adopt a positive action plan (see Guide 22). The plan will be reviewed quarterly by the District Director until the delinquency is eliminated or other servicing actions are recommended.

(C) The District Director may, after the end of the borrower's third fiscal year of operation, exempt it from submitting management reports provided it:

(*1*) Is current on its loan payments.

(*2*) Is meeting the conditions of its agreements with FmHA.

(*3*) Has demonstrated its ability to successfully operate and manage the organization and has not obtained subsequent loans in the last 3 years which have significantly altered the scope of the project.

(*4*) Has the State Director's written concurrence for all borrowers whose FmHA indebtedness exceeds $1,000,000.

(D) Borrowers qualifying for this exemption will still be required to submit a copy of their audits or annual financial statements.

(E) Ordinarily and exception will not be made to the requirement for the borrower to submit a copy of its annual budget.

(F) The District Director or State Director may reinstate the requirements for submission of periodic management reports for those borrowers who became delinquent or otherwise are not carrying out their agreements with FmHA or require more frequent submission of management reports. This requirement will be reinstated for borrowers receiving a subsequent loan which will significantly alter the scope of the project.

(G) The District Director may accept management reports which are not prepared on page 1 of Form FmHA 442-2 Schedule 1 but contain like information. However, page 2 of this form must be used by all borrowers required to furnish management reports.

(iii) *The State Director* is responsible for:

(A) The review of the District Director's submission for all borrowers whose indebtedness exceeds $1,000,000. The State Director will forward comments to the District Director in order that a response, if necessary, can be sent to the borrower within 40 calendar days after the borrower's submission of its management reports.

(B) The review of all delinquent and problem case borrower management reports. Ordinarily, review findings and instructions regarding further management assistance will be determined, and provided to the District Office within 20 calendar days of submission for delinquent and problem borrowers.

(C) Forwarding to the National Office copies of review findings, instructions for further assistance, and positive action plans on delinquent borrowers and borrowers experiencing financial problems, at same time the findings and instructions are provided to the District Office.

(2) *Audits and financial statements*—(i) *The District Director* is responsible for obtaining all audit reports and financial statements from the borrower. Those received from borrowers whose FmHA indebtedness exceeds $1,000,000 and from delinquent and problem case borrowers will be promptly reviewed and forwarded to the State Director with appropriate comments.

(ii) *The District Director* is responsible for the review of audits and financial statements and for recommendations and instructions for borrower assistance. For borrowers required to have audits, in accordance with paragraph (q)(4)(i)(A) of this section, the District Director is also responsible for any necessary follow up required because of audit resolution items received from the cognizant agencies.

(iii) *The State Director* is responsible for the review of audits of borrowers whose indebtedness exceeds $1,000,000 and delinquent and problem case borrowers. The State Director may recommend to the District Director any necessary actions to be taken.

(3) *Security inspections.* A representative of the borrower will ordinarily accompany the District Director during each inspection.

(i) *Post construction inspection.* The District Director will inspect each facility between the beginning of the ninth and the end of the eleventh full month of the first year of operation. This will normally coincide with the District Director's review of the borrower's total operational and management practices described in paragraph (r)(1)(ii)(A) of this section. The results of this inspection will be reported to the State Director on Form FmHA 1924-12. Earlier inspections will be made when operational or other problems indicate a need. The State Director will provide guidance to the District Director to assure that action will be taken to correct project deficiencies.

(ii) *Subsequent inspections.* The District Director will make subsequent inspections of borrower security property and facilities during each third year after the post construction inspection. The results of this inspection will be reported to the State Director on Form FmHA 1924-12.

(iii) *Special inspections.* The District Director may request, or the State Director may determine, the need for a member of the State staff to make certain security inspections. In such cases, the State Director will detail a staff member to make such inspections.

(iv) *Follow-up inspections.* If any inspection discloses deficiencies or exceptions, or otherwise indicates a need for subsequent inspections prior to the third year, the State Director will prescribe the type and frequency of follow-up inspections. These inspections will be made until all deficiencies and exceptions have been corrected.

(4) *Civil rights compliance reviews* will be performed under Subpart E of Part 1901 of this chapter for the life of the loan.

(5) Other loan servicing actions will be in accordance with Subparts E and O of Part 1951 of this chapter.

(s) *Loans under Pub. L. 98-8 (Emergency Jobs Bill).* Each FmHA project that is funded utilizing FmHA loan funds authorized by the Pub. L. 98-8 (Emergency Jobs Bill), will also comply with § 1942.385 (b) and (c) of Subpart H of Part 1942 of this chapter.

[50 FR 7296, Feb. 22, 1985, as amended at 50 FR 12768, Apr. 1, 1985; 50 FR 12990 and 13005, Apr. 2, 1985; 50 FR 43379, Oct. 25, 1985; 51 FR 10186, Mar. 25, 1986; 52 FR 8035, Mar. 13, 1987; 52 FR 41949, Nov. 2, 1987; 52 FR 43725, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987; 53 FR 6787, Mar. 3, 1988; 54 FR 18882, May 3, 1989; 55 FR 13503, Apr. 11, 1990]

§ 1942.18 Community Facilities—Planning, Bidding, Contracting, Constructing.

(a) *General.* This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or architect or through contract, subject to FmHA concurrence. Architects and engineers must be licensed in the State where the facility is to be constructed.

(c) *Preliminary reports.* Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from FmHA.

(d) *Design policies.* Facilities financed by FmHA will be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. FmHA's environmental considerations are under Subpart G of Part 1940 of this chapter.

(i) *Floodplains and wetlands.* Facilities must avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands, and avoid direct or indirect support of floodplain and wetland development whenever there is a practicable alternative. This subject is more fully discussed in Executive Order 11988, Executive Order 11990, and Water Resources Council's Floodplain Management Guidelines (43 FR 6030) which is available in all FmHA offices. Facilities located in special flood and mudslide prone areas must comply with FmHA's eligibility and insurance requirements in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(ii) *Coastal Zone Management.* Facilities shall be designed and constructed in a manner consistent with approved State management programs, under the Coastal Zone Management Act of 1972 (Pub. L. 92-583 Section 307 (c)(1) and (2)) as supplemented by the Department of Commerce regulations 15 CFR Part 930.

(iii) *Wild and Scenic Rivers.* Facilities shall be designed and constructed in order that designated wild and scenic rivers be preserved in free-flowing condition and that they and their immediate environments be protected for the benefit and enjoyment of present and future generations under the Wild and Scenic Rivers Act of 1978 (Pub. L. 95-625).

(iv) *Endangered species.* Facilities shall be designed and constructed in a manner to conserve, to the extent practicable, the various endangered and threatened species of fish or wildlife and plants, and will not jeopardize their continued existence and will not result in destruction or modification of the habitat of species in the Endangered Species Act of 1973 (Pub. L. 93-205).

(2) *Historic preservation.* Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with the National Historic Preservation Act of 1966 (16 U.S.C 470) as supplemented by 36 CFR Part 800 and Executive Order 11593, "Protection and Enhancement of the Cultural Environment." Subpart F of Part 1901 of this chapter sets forth procedures for the protection of Historic and Archaeological Properties.

(3) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as implemented by 7 CFR Parts 15 and 15b.

(4) *Health Care Facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0-913962-96-1, "Guidelines for Construction and Equipment of Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the *1985* edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all FmHA State Offices. Under § 1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

(5) *Energy conservation.* Facility design should consider cost effective energy saving measures or devices.

(6) *Lead base paints.* Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317) with reference to paint specifications used according to Exhibit H of Subpart A of Part 1924 of this chapter.

(7) *Fire protection.* Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) *Growth capacity.* Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) *Water quality.* All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93-523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR Part 141).

(11) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by FmHA. Extensions to existing combined systems can only be financed

when separate systems are impractical.

(12) *Compliance.* All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041-001-00187-5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) *Pipe.* All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1½ times the working pressure or rated pressure of the pipe, whichever is greater.

(16) *Metering devices.* Water facilities financed by FmHA will have metering devices for each connection. An exception to this requirement may be granted by the FmHA State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(e) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents* are available from FmHA. When FmHA's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by FmHA, OGC's review of the construction contract documents will be obtained prior to their use.

(2) *Contract review and approval.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bids bonds, and bid tabulation sheets will be forwarded to FmHA for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA. The FmHA State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as perfabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) *Utility purchase contracts.* Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and approved by the FmHA State Director or designee. To the extent practical, FmHA review and approval of such contracts should take place prior to their execution by the owner. Form FmHA 442-30, "Water Purchase Contract," may be used when appropriate. If the FmHA loan will be repaid from system revenues, the contract will be pledged to FmHA as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's

users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable FmHA to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(*1*) Alternative supplies considered; and

(*2*) Recommendations and comments; and

(*3*) Any other necessary supporting information.

(B) Copies of the following:

(*1*) Proposed letter of conditions; and

(*2*) Form FmHA 442-7, "Operating Budget"; and

(*3*) Form FmHA 442-3, "Balance Sheet"; and

(*4*) Preliminary Engineering Report; and

(*5*) Proposed Contract.

(C) Owner and FmHA engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless FmHA determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to FmHA as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) *Sewage treatment and bulk water sales contracts.* Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to FmHA concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts.

(h) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the FmHA State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under § 1942.17(p)(5) of this part.

(i) *Owner's contractual responsibility.* This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractural and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) *Owner's procurement regulations.* Owner's procurement regulations must comply with the following standards:

(1) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by FmHA funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by FmHA funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, FmHA shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If FmHA determines that a design or material, other than those that were recommended should be considered by including them in the procurement proc-

ess as an acceptable design or material in the water or waste disposal facility. FmHA shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing.

(3) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(4) *Solicitation of offers,* whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) *Small, minority, and women's businesses and labor surplus area firms.* (i) affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let require the prime contractor to take the affirmative steps in paragraphs (j)(5)(i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to FmHA of the steps taken to comply with paragraphs (j)(5)(i) (A) through (F) (j)(5)(ii), and (j)(5)(iii) of this section.

(6) *Contract pricing.* Cost plus a percentage of cost method of contracting shall not be used.

(7) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;

(iii) The governing body's officers, employees, or agents;

(iv) Any member of the immediate family or partners in paragraphs (j)(7)(i), (j)(7)(ii), or (j)(7)(iii) of this section; or

(v) An organization which employs, or is about to employ, any person in paragraph (j)(7)(i), (j)(7)(ii), (j)(7)(iii) or (j)(7)(iv) of this section.

(8) *Contract award.* Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred.

(k) *Procurement methods.* Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and perinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) The item is available only from a single source; or

(ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(iii) After solicitation of a number of sources, competition is determined inadequate; or

(iv) No acceptable bids have been received after formal advertising; or

(v) The procurement of architectural/engineering and other professional services.

(vi) The aggregate amount does not exceed $50,000.

(5) *Additional procurement methods.* Additional innovative procurement methods may be used by the owner with prior written approval of the FmHA National Office.

(l) *Contracting methods.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j)(7) of this section. Procurement methods which combine or rearrange design, inspection or construction services (such as design/build or construction management) may be used with FmHA written approval. If the contract amount exceeds $100,000, National Office prior concurrence must be obtained under § 1942.9(b) of this subpart. This method cannot be used when an FmHA grant is involved. The owner should request FmHA approval by providing at least the following information to FmHA:

(1) The owner's written request to use an unconventional contracting method with a description of the proposed method.

(2) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include items such as:

(i) A nontechnical statement summarizing the work to be performed by the contractor and the results expected.

(ii) The sequence in which the work is to be performed and a proposed construction schedule.

(3) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for:

(i) Any extra cost which may result from errors or omissions in the services provided under the contract.

(ii) Compliance with all Federal, State, and local requirements effective on the contract execution date.

(4) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(5) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(6) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(7) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by FmHA prior to the start of construction.

(8) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(m) *Contracts awarded prior to preapplications.* Owners awarding construction or other procurement contracts prior to filing a pre-application with FmHA must comply with the following:

(1) *Evidence.* Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of FmHA regulations. The evidence will consist of at least the following:

(i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates an irreconcilable failure of previous financial arrangements; or

(ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.

(2) *Modifications.* Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the FmHA financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m)(4) of this section.

(3) *Consultant's certification.* Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(4) *Owner's certification.* Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to FmHA financing for construction already performed even though the requirements may not have been included in the contract documents.

(n) *Contract provisions.* In addition to provisions defining a sound and complete contract, any recipient of FmHA funds shall include the following contract provisions or conditions in all contracts:

(1) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) *Termination.* All contracts exceeding $10,000, shall contain provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions when the contract may be terminated because of circumstances beyond the control of the contractor.

(3) *Surety.* In all contracts for construction or facility improvements awarded exceeding $100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment, each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form FmHA 1924-10, "Release by Claimants," and Form FmHA 1924-9, "Certificate of Contractor's Release," may be obtained at the local FmHA office and used for this purpose. The United States, acting through the Farmers Home Administration, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended

and be legally doing business in the State where the facility is located.

(4) *Equal Employment Opportunity.* All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60.

(5) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report all suspected or reported violations to FmHA.

(6) *Records.* All negotiated contracts (except those of $2,500 or less) awarded by owners shall include a provision to the effect that the owner, FmHA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for three years after owners make final payments and all other pending matters are closed.

(7) *State Energy Conservation Plan.* Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(8) *Change orders.* The construction contract shall require that all contract change orders be approved in writing by FmHA.

(9) *FmHA concurrence.* All contracts must contain a provision that they shall not be effective unless and until the FmHA State Director or designee concurs in writing.

(10) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work has been completed. If the job is proceeding satisfactory at 50 percent completion, further partial payments may be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 percent of the value of the work completed.

(11) *Other compliance requirements.* Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FmHA and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 40 CFR Part 15.4(c) as set forth in Guide 18 of this subpart which is available in all FmHA offices.

(o) *Contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where FmHA will review the planned development with the owner, its architect or engineer, resident in-

spector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA 1924-16, "Record of Preconstruction Conference," and the discussion and agreements will be documented. Form FmHA 1924-16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA funds to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA as soon as any of the following conditions are met:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA assistance.

(3) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by FmHA upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the resident inspector to the owner and to FmHA for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and FmHA for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form FmHA 1924-18, "Partial Payment Estimate," are available on request from FmHA.

(4) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

(i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.

(ii) All entries shall be legible and shall be made in ink.

(iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.

(iv) The daily entries shall be made available to FmHA personnel and will be reviewed during project inspections.

(5) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a FmHA State Office staff representative, preferably the State Staff architect or engineer. Prefinal inspections may be made without FmHA State Office staff participation if the State Director or a designee determines that the facility does not utilize complicated construction tech-

niques, materials or equipment for facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form FmHA 1924-12, "Inspection Report," and a copy provided to all appropriate parties.

(6) *Final inspection.* A final inspection will be made by FmHA before final payment is made.

(7) *Change is development plans.*

(i) Changes in development plans may be approved by FmHA when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA's security; and

(D) The change is within the scope of the contract.

(ii) Changes will be recorded on Form FmHA 1924-7, "Contract Change Order," or, other similar forms may be used with the prior approval of the State Director or designee. Regardless of the form, charge orders must be approved by the FmHA State Director or a designated representative.

(iii) Changes should be accomplished only after FmHA approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 8035, Mar. 13, 1987; 53 FR 6791, Mar. 3, 1988; 54 FR 14334, Apr. 11, 1989; 54 FR 18883, May 3, 1989]

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

(a) *General.* This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) *Policies related to use of bond counsel.* Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b) (1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) *Issues of $250,000 or less.* At the option of the applicant for issues of $250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents when the applicant, FmHA, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) *Issues of $50,000 or less.* At the option of the applicant and with the prior approval of the FmHA State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed $50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by FmHA to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.

(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with FmHA requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA.

(3) *For loans of less than $500,000.* The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b)(2) (iii) through (vi) of this section.

(c) *Bond transcript documents.* Any questions with respect to FmHA requirements should be discusesd with the FmHA representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA:

(1) Copies of all organizational documents.

(2) Copies of general incumbency certificate.

(3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(5) Certified copies of the resolution or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

(9) Certified copies of resolutions or other documents pertaining to the bond award.

(10) Any additional or supporting documents required by bond counsel.

(11) For loans involving multiple advances of FmHA loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a

final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of Section 306(a)(1) or to Section 309A(h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926(a)(1) or 1929a(h)], and providing that if the bonds evidencing the indebtedness in question are required by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) *Interim financing from commercial sources during construction period for loans of $50,000 or more.* In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds.

(e) *Permanent instruments for FmHA loans to repay interim commercial financing.* FmHA loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) *First preference—Form FmHA 440-22, "Promissory Note (Association or Organization)".* If legally permissible use Form FmHA 440-22 for insured loans.

(2) *Second preference—single instruments with amortized installments.* If Form FmHA 440.22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each FmHA advance on the reverse thereof or on an attachment to the instrument. Form FmHA 440-22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that "interest only" is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment date thereafter.

(i) Annual payments—Subtract the due date of the *last annual interest only* installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing: 7-5-1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7-5-1977 and 7-5-1978
First Regular Installment: 7-5-1979
Final Installment: 7-5-2016
Computation:
  2016 − 1978 = 38 annual payments
  $100,000.00 × .05929 = $5,929.00 annual payment due

(ii) Semiannual payments—Multiply by two the number of years between the due date of the *last annual interest only* installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Semiannual Payment:

Date of Loan Closing: 7-5-1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7-5-1977 and 7-5-1978
First Regular Installment: 7-5-1979
Final Installment: 7-5-2016
Computation:
  2016 − 1978 = 38 × 2 = 76 semiannual periods

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$100,000.00 × .02952 = $2,952.00 semi-annual payment due

(iii) Monthly payments—Multiply by twelve the number of years between the due date of the *last annual interest only* installment and the final installment to determine the number of monthly payments applicable. When there are no interest only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Monthly Payment:

Date of Loan Closing: 7-5-1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7-5-1977 and 7-5-1978
First Regular Installment: 7-5-1979
Final Installment: 7-5-2016
Computation:
2016 − 1978 = 38 × 12 = 456 monthly payments
$100,000.00 × .00491 = $491.00 monthly payment due

(3) *Third preference—single instrument with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e)(2) of this section, "Second perference" applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

(*1*) Billed delinquent interest,

(*2*) Past due interest installments,

(*3*) Past due principal installments,

(*4*) Interest installment due, and

(*5*) Principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, *use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers.* Such bonds will conform with the minimum requirements of paragraph (h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e)(3) of this section.

(f) *Multiple advances of FmHA funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

(g) *Multiple advances of FmHA funds using temporary debt instrument.* When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of FmHA loan funds and will be for the full amount of the FmHA loan. The instrument will be prepared by bond counsel (or local counsel if bond counsel is not involved) and approved by the State Director and OGC. At the same time FmHA delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(1) The date from which each advance will bear interest.

(2) The interest rate.

(3) A payment schedule providing for interest on outstanding principal at least annually.

(4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) *Minimum bond specifications.* The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

(1) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1000). Single bonds may provide for repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) to compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

(2) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name of "United States of America, Farmers Home Administration," and will remain so registered at all times while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the appropriate FmHA State Office.

(3) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) *Date of bond.* Bonds will preferably be dated as of the day of delivery, however, may be dated another date at the option of the borrower and subject to approval by FmHA. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. Monthly payments will be required if consistent with the foregoing, and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(6) *Place of payment.* Payments on bonds purchased by FmHA should be submitted to the FmHA District Office by the borrower. The District Office will then remit the payments to the Finance Office or deposit them in a Treasury General Account in accordance with Subpart B of Part 1951 of this chapter.

(7) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by FmHA except to the extent limited by the provisions under

the "Third Preference" and "Fourth Preference" in paragraph (e) of this section.

(8) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(9) *Scheduling of FmHA payments when joint financing is involved.* In all cases in which FmHA is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA payments of principal and interest should approximate amortized installments.

(10) *Precautions.* The following types of provisions in debt instruments should be avoided.

(i) Provisions for the holder to manually post each payment to the instrument.

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA, may post the date and amount of each advance or repayment on the instrument.

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed.

(iv) Provisions that amend convenants contained in Forms FmHA 1942-47, "Loan Resolution (Public Bodies)," or FmHA 1942-9, "Loan Resolution (Security Agreement)."

(11) *Multiple Loan Instruments.* The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments.

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form FmHA 1940-1, "Request for Obligation of Funds", of the action.

(i) *Bidding by FmHA.* Bonds offered for public sale shall be offered in accordance with State law, in such a manner to encourage public bidding. FmHA will not submit a bid at the advertised sale unless required by State law, nor will reference to FmHA's rates and terms be included. If no acceptable bid is received, FmHA will negotiate the purchase of the bonds.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6791, Mar. 3, 1988; 54 FR 18883, May 3, 1989]

§ 1942.20 Community Facility Guides.

(a) The following documents are attached and made part of this subpart and may be used by FmHA officials in administering this program.

(1) Guide 1 and 1a—Guide Letter for Use in Informing Private Lender of FmHA's Commitment.

(2) Guide 2—Water Users Agreement.

(3) Guide 3—Service Declination Statement.

(4) Guide 4—Bylaws.

(5) Guide 5—Financial Feasibility Report.

(6) Guide 6—Preliminary Architectural Feasibility Report.

(7) Guide 7—Preliminary Engineering Report Water Facility.

(8) Guide 8—Preliminary Engineering Report Sewerage Systems.

(9) Guide 9—Preliminary Engineering Report Solid Waste Disposal Systems.

(10) Guide 10—Preliminary Engineering Report Storm Waste-Water Disposal.

(11) Guide 11—Daily Inspection Report.

(12) Guide 12—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration—Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an FmHA Loan.

(13) Guide 13—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration—Department of Agriculture Regarding Supplementary Grant Assistance for the Construction of Public Works and Development Facilities.

(14) Guide 14—Legal Services Agreement.

(15) Guide 15—Community Facility Borrower's Application.

(16) Guide 16—Community Facility Loan Docket.

(17) Guide 17—Construction Contract Documents—Short Form.

(18) Guide 18—FmHA Supplemental General Conditions.

(19) Guide 19—Construction Contract Documents.

(20) Guide 20—Agreement for Engineering Services (FmHA/EPA Jointly Funded Projects).

(21) Guide 21—Review of Audit Reports.

(22) Guide 22—Delinquent Accounts Positive Action Plan.

(23) Guide 23—Agreement for Joint Use of Electric System Poles.

(24) Guide 24—Minimum Suggested Contents of Management Agreements.

(25) Guide 25—Joint Policy Statement Between EPA and FmHA.

(26) Guide 26—Community Programs Project Selection Criteria.

(27) Exhibit A—Circular No. A-128.

(28) Exhibit B—Department of Agriculture Regional Inspector General (OIG).

(b) These guides and exhibits are for use by FmHA officials, applicants and applicant's officials and/or agents on certain matters related to the planning, development, and operation of essential community facilities which involve the use of loans and/or grants from FmHA. This includes activities related to applying for and obtaining such financial assistance. These guides and exhibits are not published in the FEDERAL REGISTER, however, they are available in any FmHA office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§§ 1942.21—1942.49 [Reserved]

§ 1942.50 OMB control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575-0015.

Subpart B—[Reserved]

Subpart C—Fire and Rescue Loans

SOURCE: 52 FR 43726, Nov. 16, 1987, unless otherwise noted.

§ 1942.101 General.

This subpart provides the policies and procedures for making and processing insured community facility loans for facilities that will primarily provide fire or rescue services. Community facility loans for other types of facilities are covered in Subpart A of this Part 1942.

§ 1942.102 Nondiscrimination.

(a) Federal statutes provide for extending Farmers Home Administration (FmHA) financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of

FmHA's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

§ 1942.103 Definitions.

For the purpose of this subpart:

(a) *Construction* means the act of building or putting together a facility that is a part of or physically attached to real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

(b) *Owner* means an applicant or borrower.

(c) *Regional Attorney* or OGC means the head of a Regional Office of General Counsel (OGC).

§ 1942.104 Application processing.

(a) *General.* Prospective applicants should request assistance by filing SF 424.2, "Application for Federal Assistance (For Construction)," with the County or District FmHA Office. When practical, District Directors should meet with prospective applicants before an application is filed to discuss eligibility and FmHA requirements and processing procedures. Throughout loan processing FmHA should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary and what is required from them. FmHA should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *County Office.* The County Office may handle initial inquiries and provide basic information about the program, application forms, and assistance in completing applications. Applications filed in the County Office should be forwarded immediately to the District Office. The applicant should be informed that further processing will be handled by the District Office. When an application is received, the County Office must establish and maintain an information folder.

(c) *District Office.* If the application is filed in the District Office, the District Director must send a copy to the County Supervisor to set up the information file. The District Director must supply information on fire and rescue loan activity within the County Office service area to the County Supervisor at key points throughout the loan making process. As a minimum, the District Director should provide appropriate copies or notice to the County Office when the following actions occur:

(1) Project summary is completed.

(2) Letter of conditions is issued.

(3) Applicant declines to execute Form FmHA 1942-46, "Letter of Intent to Meet Conditions."

(4) Applicant is notified of loan approval.

(5) A loan is properly closed.

(6) A construction contract is awarded.

(7) A final inspection is completed.

(d) *Unfavorable decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on an application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

> The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 55 FR 13504, Apr. 11, 1990]

§ 1942.105 Environmental review.

FmHA must conduct and document an environmental review for each proposed project in accordance with Subpart G of Part 1940 of this chapter. The review should be completed as soon as possible after receipt of an application. The loan approving official must determine an adequate environmental review has been completed before requesting an obligation of funds.

§ 1942.106 Intergovernmental review.

(a) Loans under this subpart are subject to intergovernmental review in accordance with Subpart H of Part 1901 and Subpart J of Part 1940 of this chapter.

(b) State intergovernmental review agencies that have selected community facility loans as a program they want to review may not be interested in reviewing proposed loans for fire and rescue facilities. In such cases, the State Director should obtain a letter from the State single point of contact exempting fire and rescue loans from A-95 and intergovernmental consultation review. A copy of the letter should be placed in the case file for each fire and rescue facility application in lieu of completing the intergovernmental review process.

(c) When an application is filed and adverse comments are not expected, the District Director should proceed with application processing pending intergovernmental review. The loan should not be obligated until any required review process has been completed.

(d) Funds allocated for use under this subpart are also for the use of eligible Indian tribes within the State, regardless of whether State development strategies include Indian reservations. Eligible Indian tribes must have equal opportunity to participate in the program as compared with other residents of the State.

§ 1942.107 Priorities.

(a) Eligible applications must be selected for processing in accordance with § 1942.17(c) of Subpart A of this Part 1942.

(b) The District Director must score each eligible application in accordance with § 1942.17(c)(2)(iii) of Subpart A of this Part 1942. The District Director must then notify the State Director of the score, proposed loan amount, and other pertinent data. The State Director should determine as soon as possible if the project has sufficient priority for further processing and notify the District Director. Normally, this consultation should be handled by telephone and documented in the running record.

(c) Applicants who appear eligible but do not have the priority necessary for further consideration at this time should be notified that funds are not available, requested to advise whether they wish to have their application maintained for future consideration and given the following notice:

> You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) to proceed.

§ 1942.108 Application docket preparation and review.

(a) *Guides.* Application dockets should be developed in accordance with § 1942.2(c) of Subpart A of this Part 1942.

(b) *Project summary.* The District Director should complete the project summary using Form FmHA 1942-43, "Project Summary-Community Facilities (Other Than Utility-Type Projects)." Comments by the State Architect/Engineer and program chief may be omitted unless the District Director or State Director requests their review. Form FmHA 1942-14, "Association Project Fund Analysis," and a budget or cash flow projection should be completed and attached.

(c) *Budgets.* All applicants must complete Form FmHA 442-7, "Operating Budget," except as provided in this paragraph. Applicants with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form FmHA 1942-52, "Cash Flow Projection," instead of Form FmHA 442-7. Projections should be provided for the current year and each year thereafter until the facility is expected to have been in operation for a full year and a full annual installment paid on the loan.

(d) *Letter of conditions.* The District Director should prepare and issue a letter of conditions in accordance with § 1942.5 (a)(1) and (c) of Subpart A of this Part 1942.

(e) *Organizational review.* As early in the application process as practical the District Director should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

(f) *National Office review.* Applications that require National Office review will be submitted in accordance with § 1942.5(b) of Subpart A of this Part 1942.

(g) *State Office review.* The State Office must monitor fire and rescue loan making and servicing and provide guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with FmHA regulations. The District Director should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine one or more District Office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases, the State Director should establish guidelines by memorandum or by State supplement to this subpart for the necessary State Office reviews.

(h) *Loan approval and fund obligation.* Loans must be approved and obligated in accordance with § 1942.5(d) of Subpart A of this Part 1942 and Subpart A of Part 1901 of this chapter.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989]

§§ 1942.109—1942.110 [Reserved]

§ 1942.111 Applicant eligibility.

(a) *General.* Loans under this subpart are subject to the provisions of § 1942.17(b) of Subpart A of this Part 1942.

(b) *Credit elsewhere determinations.* The District Director must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the District Director should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources District Directors should maintain liaison with representatives of lenders in the district. The State Director should keep District Directors informed regarding lenders outside the district that might make loans in the district. District Directors should maintain criteria for determining applications that should be referred to commercial lenders and maintain a list of lender representatives interested in receiving such referrals.

(c) *Public use.* Loans under this subpart are subject to the provisions of § 1942.17(e) of Subpart A of this Part 1942.

§ 1942.112 Eligible loan purposes.

(a) Funds may be used:

(1) To construct, enlarge, extend or otherwise improve essential community facilities primarily providing fire or rescue services primarily to rural residents. "Otherwise improve" includes but is not limited to the following:

(i) The purchase of major equipment, such as fire trucks and ambulances, which will, in themselves, provide an essential service to rural residents.

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(2) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a)(1) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting but not for more than 3 years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA.

(iii) Costs of acquiring interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof; and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(3) To pay obligations for construction or procurement incurred before loan approval. Construction work or procurement actions should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction or procurement before loan approval, applicants may request FmHA approval to pay such obligations. Such requests may be approved if FmHA determines that:

(i) Compelling reasons exist for incurring obligations before loan approval; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by FmHA; and

(iv) All environmental requirements applicable to FmHA and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material or other liens that may attach to the security property. FmHA may authorize payment of such obligations at the time of loan closing. FmHA's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA authorization for paying such obligations shall be in writing. If construction or procurement is started without FmHA approval, post approval in accordance with this section may be considered.

(b) Funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost.

(2) Loan finder's fees.

(3) Projects located within the Coastal Barriers Resource system that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97-348.

§ 1942.113 Rates and terms.

Rates and terms for loans under this subpart are as set out in § 1942.17(f) of Subpart A of this Part 1942.

§ 1942.114 Security.

Specific requirements for security for each loan will be included in the letter of conditions. Loans must be secured by the best security position practicable, in a manner which will adequately protect the interest of FmHA during the repayment period of the loan, and in accordance with the following:

(a) Security must include one of the following:

(1) A pledge of revenue and a lien on all real estate and major equipment purchased or developed with the FmHA loan; or

(2) General obligation bonds or bonds pledging other taxes.

(b) Additional security may be required as determined necessary by the loan approval official. In determining the need for additional security the loan approval official should carefully consider:

(1) The estimated market value of real estate and equipment security.

(2) The adequacy and dependability of the applicant's revenues, based on the applicant's financial records, the project financial feasibility report, and the project budgets.

(3) The degree of community commitment to the project, as evidenced by items such as active broad based membership, aggressive leadership, broad based fund drives, or contributions by local public bodies.

(c) Additional security may include, but is not limited to, the following:

(1) Liens on additional real estate or equipment.

(2) A pledge of revenues from additional sources.

(3) An assignment of assured income in accordance with § 1942.17(g)(3)(iii)(A)(*1*) of Subpart A of this Part 1942.

(d) Review and approval or concurrence in the State Office is required if the security will not include a pledge of taxes and the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application.

(e) Review and concurrence in the National Office is required if the security will not include a pledge of taxes, the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application, and the amount of the loan will exceed $250,000.

(f) Loans under this subpart are subject to the provisions of § 1942.17(g)(1) of Subpart A of this Part 1942, regarding security for projects utilizing joint financing.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.115 Reasonable project costs.

Applicants are responsible for determining that prices paid for property rights, construction, equipment, and other project development are reasonable and fair. FmHA may require an appraisal by an independent appraiser or FmHA employee.

§ 1942.116 Economic feasibility requirements.

All projects financed under this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA staff and approval official. All applicants will be expected to provide a financial feasibility report. These financial feasibility reports will normally be:

(a) Included as part of the preliminary engineer/architectural report using Guide 6 to Subpart A of this Part 1942 (available in any FmHA Office), or

(b) Prepared by the applicant using Form FmHA 1942-54, "Applicant's Feasibility Report."

§ 1942.117 General requirements.

(a) *Reserve requirements.* Loans under this subpart are subject to the provisions of § 1942.17 (i) of Subpart A of this Part 1942.

(b) *Membership authorization.* The membership of organizations other than public bodies must authorize the project and its financing except the District Director may, with the concurrence of the State Director (with advice of OGC as needed), accept the loan resolution without such membership authorization when State statutes and the organization charter and bylaws do not require such authorization.

(c) *Insurance and bonding.* Loans under this subpart are subject to the provisions of § 1942.17(j)(3) of Subpart A of this Part 1942.

(d) *Acquisition of land and rights.* Loans under this subpart are subject to the provisions of § 1942.17(j)(4) of Subpart A of this Part 1942.

(e) *Lease agreements.* Loans under this subpart are subject to the provisions of § 1942.17(j)(5) of Subpart A of this Part 1942.

(f) *Notes and bonds.* Loans under this subpart are subject to the provisions of § 1942.17(j)(6) and § 1942.19 of Subpart A of this Part 1942.

(g) *Public information.* Loans under this subpart are subject to the provisions of § 1942.17 (j)(9) of Subpart A of this Part 1942.

(h) *Joint funding.* Loans under this subpart are subject to the provisions of § 1942.2 (e) and § 1942.17 (j)(11) of Subpart A of this Part 1942.

§ 1942.118 Other Federal, State, and local requirements.

(a) Loans under this subpart are subject to the provisions of § 1942.17 (k) of Subpart A of this Part 1942.

(b) An initial compliance review should be completed under Subpart E of Part 1901 of this chapter.

§ 1942.119 Professional services and borrower contracts.

(a) Loans under this subpart are subject to the provisions of § 1942.17 (l) of Subpart A of this Part 1942.

(b) The District Director will, with assistance as necessary by the State Director and OGC, concur in agreements between borrowers and third parties such as contracts for professional and technical services. The State Director may require State Office review of such documents in accordance with § 1942.108 (g) of this subpart. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

§§ 1942.120—1942.121 [Reserved]

§ 1942.122 Actions prior to loan closing and start of construction.

(a) *Excess FmHA loan funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(1) of Subpart A of this Part 1942.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(2) of Subpart A of this Part 1942.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(3) of Subpart A of this Part 1942.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(5) of Subpart A of this Part 1942 this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(6) of Subpart A of this Part 1942.

(f) *Assurance agreement.* All applicants must execute Form FmHA 400-4, "Assurance Agreement," at or before loan closing.

§ 1942.123 Loan closing.

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and § 1942.19 of Subpart A of this Part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in § 1942.17 (j)(4)(i)(B) of Subpart A of this Part 1942.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgements, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the Distict Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent

instruments, the sequence of preference set out § 1942.19(e) of Subpart A of this Part 1942 will be followed.

(i) *Bond registration record.* Form FmHA 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take the appropriate actions outlined in FmHA Instruction 102.1 (available in any FmHA office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 102.1 (available in any FmHA office.)

(k) *Safeguarding bond shipments.* FmHA personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018-E (available in any FmHA office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the District Director will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the District Director's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review FmHA standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of § 1942.12 of Subpart A of this Part 1942.

§§ 1942.124—1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsbile for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's "in-house" engineer or architect or through contract, subject to FmHA concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that FmHA may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed $100,000. Guide 6 to Subpart A of this Part 1942 (available in any FmHA office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive FmHA concurrence. When negotiated procurement is used for construction costing not more than $100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the facility is to be located and should include all

materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with paragraph (e) of this section and the small purchase procedures set out in § 1942.18(k)(1) of Subpart A of this Part 1942. In such cases, FmHA may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under § 1942.18(1) of Subpart A of this Part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if FmHA determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by FmHA must be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as implemented by 7 CFR Parts 15 and 15b.

(d) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents.* When standard construction contract documents available from FmHA are used, or when the amount of the contract does not exceed $100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by FmHA, and the contract amount exceeds $100,000, the Regonal Attorney must review the documents before their use.

(2) *Contract review and approval.* The owner's attorney will review executed contract documents, including performance and payment bonds, and certify that they are adequate, legal and binding, and that the persons executing the documents have been authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to FmHA for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA. The FmHA District Director is responsible for approving construction contracts with advice and guidance of the State Director and Regional Attorney when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (l)(3) of this section.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of § 1942.18(i) of Subpart A of this Part 1942.

(g) *Owner's Procurement regulations.* Loans under this subpart are subject to the provisions of § 1942.18(j) of Subpart A of this Part 1942.

(h) *Procurement methods.* Unless the FmHA National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in § 1942.18(k)(1) of Subpart A of this Part 1942.

(2) Competitive sealed bids as provided in § 1942.18(k)(2) of Subpart A of this Part 1942. Competitive sealed bids is the preferred procurement method of construction projects, except for buildings costing $100,000 or less when the owner desires to use a "preengineered" or "packaged" building.

(3) Competitive negotiation as provided in § 1942.18(k)(3) of Subpart A of this Part 1942. Competitive negotiation is the preferred procurement method of buildings not exceeding $100,000 in cost when the owner desires to use a "pre-engineered" or "packaged" building and for major equipment.

(4) Noncompetitive negotiation as provided in § 1942.18(k)(4) of Subpart A of this Part 1942.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of § 1942.18(1) of Subpart A of this Part 1942.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of § 1942.18(m) of Subpart A of this Part 1942.

(k) *Construction Contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of § 1942.18(n) of Subpart A of this Part 1942. Construction contracts for loans under this subpart are also subject to the provisions of § 1901.205 of Subpart E of Part 1901 of this chapter, regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to Subpart A of this Part 1942 of this chapter will normally be used instead of Form FmHA 1924-5, "Invitation for Bid (Construction Contract)," and Form FmHA 1924-6, "Construction Contract." When Guide 18 is used with a design/build type contract, section 4, "Conflict of Interest," may need revision.

(l) *Construction contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where FmHA will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA 1924-16, "Record of Preconstruction Conference," and the discussions and agreements will be documented. Form FmHA 1924-16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA funds. The reports are to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time perods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA assistance.

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or FmHA or the borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a résumé of qualifications of the project inspector to FmHA for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies to the FmHA District Director. Guide 11 of Subpart A of this Part 1942 (available in any FmHA office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by FmHA are solely for its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structrure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner, project inspector, owner's architect or engineer, representatives of other agencies involved, and the District Director. The inspection results will be recorded on Form FmHA 1924-12, "Inspection Report," and a copy provided to all interested parties, including the FmHA State Director.

(5) *Final inspection.* A final inspection will be made by FmHA before final payment is made.

(6) *Changes in development plans.* (i) Changes in development plans may be approved by FmHA when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA's security; and

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of Subpart G of Part 1940 of this chapter have been met.

(ii) Changes will be recorded on Form FmHA 1924-7, "Contract Change Order," or other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the FmHA District Director.

(iii) Changes should be accomplished only after FmHA approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.127 Project monitoring and fund delivery.

(a) *Coordination of funding sources.* When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) *Multiple advances.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(2) of Subpart A of this Part 1942.

(c) *Use and accountability of funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(3) of Subpart A of this Part 1942.

(d) *Development inspections.* Loans under this subpart are subject to the provisions of § 1942.17(p)(4) of Subpart A of this Part 1942.

(e) *Payment for project costs.* Each payment for project costs must be approved by the borrower's governing body.

(1) *Construction.* Payment for construction must be for amounts shown on payment estimate forms. Form FmHA 1924-18, "Partial Payment Estimate," may be used for ths purpose or other similar forms may be used with the prior approval of the District Director. However, the District Director cannot require more reporting burden than is required by Form FmHA 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project cost, including construction partial payment estimates, by FmHA does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) *Major equipment.* Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use FmHA loan funds to make deposits on equipment not ready for delivery. If a borrower purchases a truck chassis from one supplier and another supplier will complete the development of a fire or rescue vehicle, FmHA may release funds to pay for the chassis when title to the chassis is transferred to the borrower.

(f) *Use of remaining funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(6) of Subpart A of this Part 1942.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.128 Borrower accounting methods, management reports and audits.

(a) Loans under this subpart are subject to the provisions of § 1942.17(q) of Subpart A of this Part 1942 except as provided in this section.

(b) Borrowers with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form FmHA 1942-53, "Cash Flow Report," instead of page one of schedule one and schedule two of Form FmHA 442-2, "Statement of Budget, Income, and Equity." When used for budgeting, the cash statement should be projected for the upcoming fiscal year. When used for quarterly or annual reports, the cash flow report should include current year projections and actual data for the prior year, the quarter just ended, and the current year to date.

§ 1942.129 Borrower supervision and servicing.

Loans under this subpart are subject to the provisions of § 1942.17(r) of Subpart A of this Part 1942 and Subpart E of Part 1951 of this chapter.

§§ 1942.130—1942.131 [Reserved]

§ 1942.132 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.133 Delegation and redelegation of authority.

Loan approval authority is in Subpart A of Part 1901 of this chapter. State Directors may delegate approval authority to District Directors to approve fire and rescue loans regardless of whether authority to approve other community facility loans is delegated. Except for loan approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.134 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006-B, (available in any FmHA Office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart and Subpart A of Part 1942 this are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or construction starts.

§§ 1942.135—1942.149 [Reserved]

§ 1942.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0120.

Subparts D—F—[Reserved]

Subpart G—Industrial Development Grants

AUTHORITY: 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; 5 U.S.C. 301.

SOURCE: 45 FR 73637, Nov. 6, 1980, unless otherwise noted.

§ 1942.301 Purpose.

This subpart outlines Farmers Home Administration (FmHA) policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises.

[53 FR 30247, Aug. 11, 1988]

§ 1942.302 Policy.

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) FmHA officials will maintain liaison with officials of other federal, state, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this Subpart are also to be considered for use of Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of FmHA County and District Offices.

[53 FR 30247, Aug. 11, 1988]

§ 1942.303 Authorities, delegation, and redelegation.

The State Director is responsible for implementing the authorities contained in this subpart and to issue State supplements redelegating these authorities to appropriate FmHA employees. Grant approval authorities are contained in Subpart A of Part 1901 of this chapter.

§ 1942.304 Definitions.

(a) *Industrial Development (ID) grants.* Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural Development Act, as amended, section 310B (7 U.S.C. 1932).

(b) Regional Commission grants—Grants made from funds made available to FmHA by the Appalachian Regional Commission (ARC) or other Federal Regional Commissions designated under Title V of the Public Works and Economic Development Act of 1965.

(c) Rural and Rural Area—Includes all territory of a State, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, or the Commonwealth of the Mariana Islands, that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

(d) Urbanized Area—An area immediately adjacent to a city having a population of 50,000 or more which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and extends from the contiguous boundary(ies) to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city but are located across a river from such city and are recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section, are not in a nonrural area.

(e) Urbanizing Area—A community which is not now, or within the foreseeable future not likely to be, clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered "independent of" when its social and economic structure (e.g., government; educational, health, and recreational facilities; and business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

(f) *Technical Assistance.* A function performed for the benefit of a grantee project and is a problem solving activity such as market research, product and/or service improvement, feasibility study, etc.

(g) *Project.* The result of the use of program funds, i.e., a facility, whether constructed by the applicant or a third party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 paragraphs (b) and (c), as well as the specific uses of the revolving funds.

(h) *Small and emerging private business enterprise.* Generally any private business which will employ 50 or less new employees and has less than $1.0 million in projected gross revenues and has or will utilize technological innovation and commercialization of (i) new products that can be used in rural areas and (ii) new processes that can be used in such production.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30247, Aug. 11, 1988]

§ 1942.305 Eligibility and priority.

(a) *Eligibility.* (1) ID grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include states, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas. The State Director will proceed as follows in rural area determinations: When the FmHA State Director determines an area to be urbanized or urbanizing, the State Director must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide the correct density figure. All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries of land set aside for such purposes will be excluded.

(2) Regional Commission Grant applicants must meet eligibility requirements of the Regional Commission and also of FmHA, in accordance with paragraph (a)(1) of this section, for FmHA to administer the Regional Commission Grant under this subpart.

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, FmHA officials must consider the priority items met be each application and the degree to which those priorities are met, and apply good judgment.

(1) *Applications.* The application and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(2) *State Office review.* All applications will be reviewed and scored for funding priority. Eligible applicants that cannot be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their application maintained in an active file for future consideration.

(3) *Selection priorities.* The priorities described below will be used by the State Director to rate applications. Points will be distributed as indicated in paragraphs (b)(3) (i) through (iv) of this section. A copy of the score sheet should be placed in the case file for future reference.

(i) *Population.* Proposed project(s) will primarily be located in a community of under 25,000 population—10 points.

(ii) *Economic conditions.*

(A) Proposed project(s) will primarily be located in areas where the unemployment rate (*1*) exceeds the State rate by 25% or more—20 points, (*2*) exceeds the State rate by less than 25%—10 points, (*3*) is equal to or less than the State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) for a family of 4 for the State is: (*1*) Less than poverty line—25 points, (*2*) more than poverty line but less than 85% of State MHI—15 points, (*3*) between 85% and 100% of State MHI—10 points, (*4*) equal or greater than State MHI—0 points.

(iii) *Experience.* Applicant has successful experience in administering a rural economic development program—15 points.

(iv) *Other.*

(A) Applicant has industry or business committed to locate in the sites—25 points.

(B) Grant request contains evidence of substantial commitment of funds from nonfederal sources for proposed projects—25 points.

(C) For grants to establish a revolving fund, points will be distributed if the grant request contains proposed third party loan/grant recipients—25 points.

(v) *Discretionary.* In certain cases the Administrator may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification from the State Director which will be based on factors such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations.

[50 FR 7296, Feb. 22, 1988, as amended at 53 FR 30247, Aug. 11, 1988; 55 FR 134, Jan. 3, 1990]

§ 1942.306 Purposes of grants.

(a) Grant funds may be used to finance and develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Startup operating cost and working capital.

(4) Technical assistance for proposed grantee projects.

(5) Reasonable fees and charges for professional services necessary for the planning and development of the project including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(6) Refinancing of debts exclusive of interest incurred by or on behalf of an association before an application for a grant when all of the following exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the grant, and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(7) Providing financial assistance to third parties through a loan or a pass through grant.

(b) Grants may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

(c) FmHA grant funds may be used jointly with funds furnished by the grantee or from other sources including FmHA loan funds. Pursuant to Pub. L. 95-334, other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities other than authorities which impose restrictions on joint financing.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30248, Aug. 11, 1988; 55 FR 135, Jan. 3 1990]

§ 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agriculture products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited agricultural production related to technical assistance projects.

(2) To finance comprehensive areawide type planning. This does not preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms and charges for those loans are not reasonable or would be for purposes not eligible under § 1942.306 of this subpart.

(b) Funds will not be used for any project which will require more than $500,000 in FmHA grant funds available under this subpart.

(c) At least 51 percent of the outstanding interest in the project has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

[53 FR 30248, Aug. 11, 1988, as amended at 55 FR 135, Jan. 3, 1990]

§ 1942.308 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions for projects eligible for FmHA assistance. FmHA has agreed to administer such funds in accordance with FmHA regulations and the requirements of the commission.

(b) The transfer of funds from a Regional Commission to FmHA will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of FmHA and the Regional Commission.

(c) ARC is authorized under the Appalachian Regional Development Act of 1965, as amended, to serve the Appalachian region. ARC grants are handled in accordance with the FmHA-ARC Agreement (Exhibit A Subpart H of this part) which applies to all ARC grants administered by FmHA. Therefore, a separate Project Management Agreement between FmHA and ARC is not needed for each ARC grant.

(d) Other Federal Regional Commissions are those authorized under Title V of the Public Works and Economic Development Act of 1965. Grants by these commissions are handled in accordance with a separate Project Management Agreement between the respective Regional Commission and FmHA for each Commission grant administered by FmHA (Guide 1 of this subpart). The agreement should be prepared by the FmHA State Director and the appropriate Commission official when the State Director receives a notice from the Commission of the amount of the grant to be made.

§ 1942.309 [Reserved]

§ 1942.310 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this Subpart are subject to Title VI of the Civil Rights Act of 1964 as outlined in Subpart E of Part 1901 of this chapter. All construction contracts of $10,000 or more must be in compliance with the requirements of Subpart E of Part 1901 of this chapter. When FmHA is administering a Federal Regional Commission grant and no FmHA ID grant funds are involved, the Federal Regional Commission may make its own determination of compliance with the Civil Rights Act of 1964. In these instances, FmHA will not conduct a review for compliance with the Act unless specifically requested to do so by the Commission.

(b) *Environmental requirements*—(1) *General applicability.* Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this Subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Although the purpose of the grant program established by this Subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA's environmental review process by § 1940.310(e)(1) of Subpart G of Part 1940 of this Chapter. However, as further specified in § 1940.330 of Subpart G of Part 1940 of this Chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of Subpart G of Part 1940 of this Chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940-20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA will review the preapplication, supporting materials and any required Forms FmHA 1940-20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA's approval of this type of grant application does not constitute FmHA's commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this Subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chapter, prior to FmHA providing its consent to the grantee to assist the third party project.

(5) *Combined Applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to thrid parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

(c) *Excess capacity or transfer of employment.* (1) If the proposed ID grant is for more than $1,000,000 and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to FmHA which will enable FmHA to determine that the proposal will not result in a project which is calculated to or likely to result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations), or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written indication will consist of a resolution from the applicant and Form FmHA 449-22, "Certificate of Non-Relocation and Market and Capacity Information Report," from each existing and future occupant of the site. The applicant may use Guide 2 of this subpart as an example in preparing the resolution. Future occupants of the site must be certified by Department of Labor (DOL) as outlined in paragraph (c)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) The State Director will check each document for completeness and

accuracy and, submit nine copies of each to the National Office for forwarding to DOL. The submittal to the National Office should be accompanied by a cover memorandum giving the amount and purpose of the grant. Information should *not* be submitted directly to DOL from the applicant or the State Office.

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of § 1942.310(c)(1) of this subpart have not been complied with. Information for obtaining this certification will be submitted in writing by the applicant to FmHA. The information will be submitted to DOL by the FmHA National Office. Grant approval may be given and funds may be obligated subject to the DOL certification being received provided FmHA has made its own separate determinations of (c)(1)(i) and (ii) of this section when the project is in excess of $1 million and affects over 50 employees.

(4) When a grant is being administered for a Federal Regional Commission and no FmHA ID grant funds are being used, the requirements for DOL determinations may be waived upon written request from the Commission. If the Commission so desires, the request will be included in the letter from the Commission to FmHA that gives notice of transfer of funds and conditions under which the funds are to be made available to the grantee. In such cases the letter of conditions from FmHA to the grantee will not include the requirement for DOL determinations.

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 7 CFR part 3015, 7 CFR part 3016, and 7 CFR part 3017, as appropriate, and established FmHA guidelines.

(e) *National Historic Preservation Act of 1966.* All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with Subpart F of Part 1901 of this chapter.

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in Title 7, Subtitle A, Part 21 of the Code of Federal Regulation.

(g) *Floodplains and wetlands.* All projects must comply with Executive Order 11988 "Floodplain Management" and Executive Order 119900 "Protection of Wetlands."

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[45 FR 73637, Nov. 6, 1980, as amended at 47 FR 54423, Dec. 3, 1982; 49 FR 3760, Jan. 30, 1984; 53 FR 30248, Aug. 11, 1988; 55 FR 135, Jan. 3, 1990]

§ 1942.311 Application processing.

(a) *Preapplications and applications.* (1) The application review and approval procedures outlined in § 1942.2 of subpart A of part 1942 of this chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. The applicant shall use SF 624, "Application for Federal Assistance," (for construction or nonconstruction programs as applicable) when requesting financial assistance under this program.

(2) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1942.305(b)(3) of this Subpart. A priority rating will be assigned to each application. Applications selected for

funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit FmHA to complete a thorough priority rating.

(b) *Review of decision.* When the District Director is informed that favorable action will not be taken on a preapplication or application, the applicant will be notified in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this chapter.

[45 FR 73637, Nov 6, 1980, as amended at 50 FR 33332, Aug. 19 1985; 53 FR 30249, Aug. 11, 1988; 55 FR 135, Jan. 3, 1990]

§§ 1942.312 [Reserved]

§ 1942.313 Plan to provide financial assistance to third parties.

(a) For applications involving establishment of a revolving fund to provide financial assistance to third parties the applicant shall develop a plan which outlines the purpose and administration of the fund. The plan will include:

(1) Planned projects to be financed.

(2) Sources of all non ID funds.

(3) Amount of technical assistance (if any).

(4) Purpose of the loans/grants.

(5) Number of jobs to be created/saved with each project.

(6) Project priority and length of time involved in completion of each project.

(7) Other information required by the State Office.

(b) Each third party project receiving funds will be reviewed for eligibility. When the applicant does not have a list of projects to be completed, the applicant should advise the FmHA at the time a preapplication is submitted.

[55 FR 135, Jan. 3, 1990]

§ 1942.314 Grants to provide financial assistance to third parties and Technical Assistance programs.

For applications involving a purpose other than a construction project to be owned by the applicant, the applicant shall develop a Scope of Work. The Scope of Work will be used to measure the performance of the grantee. As a minimum, the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized, i.e., Technical Assistance, Revolving Fund, etc.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made (key personnel should be identified).

(d) How the grant purposes will be accomplished.

(e) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the ID program.

(f) For grants involving a revolving fund the scope of work should include those items listed in paragraphs (a) through (e) of this section as well as the following:

(1) Information which will establish/identify the need for the revolving loan fund.

(2) Financial statements which will demonstrate the financial ability of the applicant to administer the revolving loan fund. As a minimum the financial statements will include:

(i) Balance sheet

(ii) Income statement

(3) Detail on the applicants experience in operating a revolving loan fund.

[55 FR 135, Jan. 3, 1990]

§ 1942.315 Docket preparation and Letter of Conditions.

(a) The applicable provisions of § 1942.5 of Subpart A of Part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets.

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in Parts 3015 and 3016 of 7 CFR are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director or other designated FmHA representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

"This letter established conditions which must be understood and agreed to by you before further consideration may be given to the application."

"This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $________."

"Please complete and return the attached Form FmHA 442-46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application."

Other items in the Letter of Conditions should include those relative to: Maximum amount of grant, contributions, interim financing, final plans and specifications, construction contract documents and bidding, required project audit, evidence of compliance with all applicable Federal, State, and local requirements, closing instructions, DOL certifications, compliance with any required environmental mitigation measures, and other requirements including those of Regional Commissions when a grant is being made by a Regional Commission.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30249, Aug. 11, 1988]

§ 1942.316 Grant approval, fund obligation and third party financial assistance.

(a) *Grant approval.* FmHA State Directors are authorized to approve grants made in accordance with this Subpart and Subpart A of Part 1901 of this chapter.

(b) *Fund obligation and approval announcement.* Funds will be obligated and approval announcement made in accordance with the provisions of § 1942.5(d) of Subpart A of Part 1942 of this chapter.

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable sections of this subpart.

[45 FR 73637, Nov. 6, 1980, as amended at 47 FR 36413, Aug. 20, 1982; 53 FR 30250, Aug. 11, 1988]

§§ 1942.317—1942.320 [Reserved]

§ 1942.321 Subsequent grants.

Subsequent grants will be processed in accordance with this subpart.

§§ 1942.322—1942.347 [Reserved]

§ 1942.348 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and show how the adverse impact will be eliminated or minimized if the exception is made.

[55 FR 135, Jan. 3, 1990]

1942.349 Forms, guides, and attachments.

Exhibit A of Subpart H of Part of 1942 of this Chapter, Guides 1 and 2 of this Subpart, Attachment 1 and Forms referenced (all available in any FmHA office) are for use in administering ID Grants.

[53 FR 30250, Aug. 11, 1988]

§ 1942.350 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0132. Public reporting burden for this collection of information is estimated to vary from one-half to 40 hours per response, with an average of 1.6 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of

information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture Clearance Officer, Office of Information Resources Management, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[55 FR 135, Jan. 3, 1990]

GUIDES TO SUBPART G

GUIDE 1—Project Management Agreement Between the ———— Regional Commission and the Farmers Home Administration, Department of Agriculture Pertaining to

(Grantee) ————————————

County, ————————————

Page No. ——

I. Introduction

A. The ——— Regional Commission is providing a (basic or supplemental) grant for (purpose) ——— to (grantee) ———, and the U.S. Department of Agriculture, Farmers Home Administration (FmHA) has approved and will administer that grant. The FmHA has determined that funds (can or cannot) be made available under its funding program for this fiscal year for the project. The project does meet all the requisites for assistance under section 310(B) of the Consolidated Farm and Rural Development Act, as amended (7 USC 1926). In order to accomplish these purposes, the ——— Regional Commission's Federal Cochairman and the FmHA State Director hereby enter into this Memorandum of Understanding which is in accordance with the 31 USC 686.

B. This agreement is intended to cover the application phase, construction phase, and final audit.

II. General

A. *Project Cost*

The project costs for the purposes of this agreement shall include the costs of construction, technical services, legal services, land acquisition, permits and rights-of-way, interest during construction and contingencies.

B. *Grant*

The ——— Regional Commission shall make a (basic or supplemental) grant of $——— up to but not exceeding ——% of the total cost of the project. These funds will be transferred to the Treasury Account of the Farmers Home Administration by Standard Form 1151, "Nonexpenditure Transfer Authorization."

C. The undersigned FmHA State Director on behalf of FmHA, in concurring to this Project Management Agreement hereby assures the Federal Cochairman that:

1. The estimated cost of the project is reasonable and the (basic or supplemental) grant, with the funds to be supplied by the applicant, are, in its judgment, sufficient to complete the project.
2. The funds to be supplied by the applicant are available or FmHA is reasonably satisfied that the applicant has the capability of supplying such funds.
3. FmHA is reasonably satisfied that the facility will be properly and efficiently administered, operated, and maintained and that the applicant will provide sufficient funds to assure the successful and continuing operation of the facility.

D. The (grantee) ——— is subject to Executive Order 11246 and will be required to evidence compliance by execution of the following:

1. Equal Opportunity Agreement—Form FmHA 400-1
2. Nondiscrimination Agreement—Form FmHA 400-4

E. The (grantee) ——— shall execute assurances of nonrelocation. (If applicable.)

III. Construction Management

A. The forms and format for the documents shall conform to the requirements in Subpart A of Part 1942 of this chapter. Generally, the following items shall be included:

1. Contract Documents
2. Specifications
3. Plans

B. FmHA will approve the plans and specifications.

C. FmHA will obtain a certification of adequacy from the Federal Environmental Protection Agency (include only when applicable).

D. FmHA will obtain a non-pollution certificate from the (state) ——— (agency) ——— (include only when applicable).

E. FmHA will make monthly inspections.

F. Contract change orders will not become effective until approved by FmHA.

G. Final inspection will be conducted by FmHA.

IV. Financial Management

A. Financial management of the project shall be according to Subpart A of Part 1942 of this chapter.

B. FmHA will provide the ——— Regional Commission with a copy of the audit report.

C. If actual costs fall below the costs on which the grant was calculated, the Federal and non-Federal shares will be reduced proportionately.

D. FmHA will conform to the financial reporting requirements for transferred funds as required by the attached copy of "Reporting of Funds Transfer by Participating Agencies."

V. Compensation

Services rendered by FmHA for the processing and administration of Commission grants in cases where neither FmHA loan nor grant funds are involved shall be on a reimbursable basis. Reimbursement will be based on five percent of the amount of the grant up to $50,000 and an additional one percent of any amount over the first $50,000 of the Commission grant. The full amount of the reimbursement will be transferred to FmHA at the time the grant funds are transferred to FmHA.

VI. No provision in this agreement shall abrogate the legal requirements of administrative responsibilities as set forth in the Consolidated Farm and Rural Development Act or section 509 of the Public Works and Economic Development Act of 1965, as amended.

For the ——— Regional Commission
(name)————————————
Federal Cochairman ————————
———, 197–
For the Farmers Home Administration, USDA
(name)————————————
State Director ——————————
———, 197–

GUIDE 2—Resolution

Whereas the ——— (hereinafter called public body) desires to obtain financial assistance from the Farmers Home Administration, United States Department of Agriculture, pursuant to section 310 B of the Consolidated Farm and Rural Development Act, for the purpose of providing ——— (describe briefly the nature of the project) ——— (herein referred to as the facility) and as a condition to and in consideration of receiving financial assistance from the Farmers Home Administration this resolution is being adopted.

Therefore, in consideration of the premises the public body agrees as follows:

1. No private business enterprises shall be allowed to use or occupy the facility if such use or occupancy would be calculated to, or is likely to, result in the transfer from one area to another of any employment or business activity provided by operations of the private business enterprises. This limitation shall not be construed to prohibit use and enjoyment of the facility by such private business entity through the establishment of a new branch, affiliate, or subsidiary if the establishment of such branch, affiliate, or subsidiary will not result in the increase in unemployment in the area of original location (or in any other area where such entity conducts business operations), unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location (or in any other area where it conducts such operation).

2. No private business enterprises shall be allowed to use or occupy the facilities if such use or occupancy would be calculated to, or is likely to, result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, where there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the sufficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse affect upon existing competitive enterprises in the area.

3. Prior to allowing the use or occupancy of the facilities by any private business enterprise, the public body shall clear such use or occupancy with the Manpower Administration, Department of Labor, Washington, DC, by submitting information required by the Department of Labor for certification under the Act. This information shall be submitted to Farmers Home Administration for transmittal to the Department of Labor. The public body agrees to make no final commitment with any private business enterprise regarding such use or occupancy if the Department of Labor issues a negative certification under the Act. The public body shall obtain prior clearance in this matter for a period of three years after the date of an affirmative certification by the Department of Labor on the application for financial assistance now pending before the Farmers Home Administration.

This resolution shall be in force and effect immediately.

The voting was yeas ——, nays ———, absent ———.

(Name of public body)————————
by (Name and Title)————————

Certification

I the undersigned as (Secretary) (Town Clerk) of the ——— do hereby certify that the foregoing resolution was duly adopted at a meeting of ——— duly called and held on the ——— day of ——— 19–, and that such resolution has not been rescinded or amended in any way. Dated this ——— day of ——, 19–.

(Seal)

(Town Clerk) (Secretary) of

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

SOURCE: 50 FR 12768, Apr. 1, 1985, unless otherwise noted.

§ 1942.351 General.

(a) This Subpart outlines the policies and authorizations and sets forth the procedures for making and processing grants to assist in financing the development cost of domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users. Farmers Home Administration (FmHA) will maintain continuous liaison and coordination with State and substate planning district officials. FmHA shall cooperate fully with appropriate State agencies in making grants in a manner which will assure maximum support of the State's strategies for development of rural areas. State and substate A-95 agencies may recommend priorities for applications. FmHA will give due consideration to all A-95 agency review comments and priority recommendations in selecting applications for funding.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this Subpart that affect applicant eligibility, the adequacy of FmHA's security or the adequacy of service to users of the facility and all other requirements of this Subpart must be met. FmHA State Directors are reminded that funds allocated for use as prescribed in this Subpart are to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in the benefits of these programs on as equal a basis as other residents of the State. This is intended to include an equal application of the outreach activities of FmHA County and District Offices.

(c) It is the policy that the County Office will normally be the entry point for preapplications and serve as the local contact point. However, applications will be filed and grants will be processed to the maximum extent possible by the District Office staff. The State Office staff will monitor grant making and servicing and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA regulations. The District Director will supply information on grant activity within the County Office service area to the County Supervisor at key points throughout the grant making process.

(d) Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1942.352 [Reserved]

§ 1942.353 Processing applications and docket preparation.

(a) Preapplications and applications for water and waste disposal development grants will be processed in accordance with §1942.2 of Subpart A of Part 1942 of this chapter.

(b) Grant dockets will be prepared in accordance with this subpart and applicable portions of Subpart A of Part 1942 of this chapter.

§ 1942.354 [Reserved]

§ 1942.355 Applicant eligibility and priority.

(a) *Eligibility.* Applicant eligibility shall be determined in accordance with § 1942.17 (b) of Subpart A of Part 1942 of this chapter. Also, grants shall not be made in connection with any project unless the project:

(1) Will serve a rural area which, if such project is carried out, is not likely to decline in population below that for which the project was designed.

(2) Is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable. Also, water systems must have sufficient capacity to provide for reasonable fire protection to the extent practicable.

(3) Is necessary for orderly community development consistent with a comprehensive community water, waste disposal, or other development plan of the rural area and not inconsistent with any planned development provided in any State, multijurisdictional, county, or municipal plan approved by competent authority for the area in which the rural community is located.

(b) *Applicant priorities.* Priority for grant funds will be given to applicants and projects in accordance with § 1942.17(c) of Subpart A of Part 1942 of this chapter.

§§ 1942.356—1942.357 [Reserved]

§ 1942.358 Use of grant funds.

Funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve community water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, utilities, and to make such other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, utilities, and to make such other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) To use FmHA grant funds for the following when a necessary part of the project relates to those facilities in paragraphs (a), (b) and (c) of this section.

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquired interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control which are necessary for development of the facility.

(3) Purchase or rent equipment necessary to install, maintain, extend, protect, operate or utilize facilities. (Subject to limitations contained in § 1942.360(a) of this subpart).

(4) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared in accordance with § 1942.18(f) of Subpart A of Part 1942 of this chapter.

(e) To use FmHA grant funds on projects where other types of financial assistance are available on all or part of the projects, provided the other assistance is on reasonable rates and terms. In such cases the maximum percentages allowed under other agencies' authorities will apply to their participation in the project. However, the FmHA grant may not exceed applicable percentages in § 1942.360(b) of this subpart of the eligible project development cost. The need for FmHA grant funds must meet the requirements of § 1942.368 of this subpart after considering all project financing.

(f) To restore FmHA loan funds used in accordance with § 1942.17(d)(1)(iv)(G) of Subpart A of Part 1942 of this chapter.

[50 FR 12768, Apr. 1, 1985, as amended at 52 FR 41949, Nov. 2, 1987]

§ 1942.359 [Reserved]

§ 1942.360 Grant limitations.

(a) Grant funds may not be used to:

(1) Finance facilities which are not modest in size, design, and cost.

(2) Pay loan or grant finder's fees.

(3) Pay for the construction of any new combined storm and sanitary sewer facilities.

(4) Pay any annually recurring costs including purchases or rentals that are generally considered to be operation and maintenance expenses.

(5) Construct or repair electric generating plants, electric transmission

lines, or gas distribution lines to provide services for commercial sale.

(6) Purchase fire trucks, hoses, and other fire fighting equipment or construct housing for such shipment.

(7) Pay rental for the use of equipment or machinery owned by the association.

(8) Pay for salesrooms or other purposes not directly related to operation and maintenance of the facility being installed or improved.

(9) Purchase existing systems.

(10) Refinance existing indebtedness.

(11) Pay interest.

(12) Pay any portion of the cost of a facility which is not located in a rural area.

(13) Pay any costs of a project when the median household income of the service area is above the poverty line and more than 100 percent of the nonmetropolitan median household income of the State. The poverty line will be that income for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(b) An FmHA development grant may not be made in excess of the following percentages (*whichever is higher*) of the eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) Seventy-five percent (75%) when the median household income of the service area is below the poverty line or below 80 percent (whichever is higher) of the Statewide nonmetropolitan median household income.

(2) Fifty-five percent (55%) when the median household income of the service area exceeds the seventy-five percent requirements described in paragraph (b)(1) of this section but is not more than 100 percent of the Statewide nonmetropolitan median household income.

[50 FR 12768, Apr. 1, 1985, as amended at 50 FR 13005, Apr. 2, 1985; 52 FR 41949, Nov. 2, 1987]

§ 1942.361—1942.362 [Reserved]

§ 1942.363 Determining the need for development grants.

(a) FmHA District Directors are responsible for determining applicant's eligibility for grants and the amount of such grants. The amount of grant assistance shall be based on the FmHA interest rate in effect at the time of grant approval. If an FmHA loan is associated with the grant and the loan is closed at a lower rate, no change will be made in the amount of grant assistance. Form FmHA 1942-51, "Water and Waste Disposal Grant Determination," will be used to determine the amount of FmHA grant assistance for which the applicant qualifies. A separate form will be used to record the determination of FmHA grant assistance for each water, sewer collection and treatment, solid waste, and storm drainage project.

(b) Grants will be used for water and waste disposal projects serving the most financially needy communities to reduce user costs to a reasonable level for farmers, ranchers, and rural residents.

(1) *Other Users.* Other rural water and waste disposal users whose total water needs are met or, if there is no meter, could be met by a single residential size water meter also may be considered eligible. For example, a user on a waste system may be considered for a grant when the total water needs of the waste user are met or could be met by such residential-size meter.

(2) *Reasonable Rate.* Reasonable user rate is defined as that which is not less than existing prevailing rates in communities having similar economic conditions being served by an established system constructed at similar costs per user. Similar user costs shall include charges, taxes, and assessments attributable to the system.

(3) *User rate.* The initial user rate after the grant is made should produce enough revenue to provide for all costs of the facility. The planned revenue should be sufficient to provide for all debt service, reserve, operation and maintenance and if appropriate,

additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

(c) Grants will be determined in accordance with the following and will not result in a user rate below that deemed to be reasonable.

(1) Grants may not exceed the percentages in § 1942.360(b) of this subpart of the eligible project development costs listed in § 1942.358 of this subpart.

(2) Applicants will be considered for grant assistance when the debt service portion of the average annual user cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) *.5 percent* when the median household income of the service area is below the poverty line or below 80 percent (whichever is higher) of the Statewide nonmetropolitan median household income.

(ii) *1.0 percent* when the median household income of the service area exceeds the .5 percent requirement but is not more than 100 percent of the Statewide nonmetropolitan median household income.

(3) In the exceptional cases where FmHA determines that a reasonable user rate has not been achieved due to unusually *high* operation and maintenance costs, construction or water acquisition costs, or other unusual factors, FmHA may proceed with a grant in an amount necessary to reduce the rate to a reasonable level as defined in paragraph (b)(2) of this section.

(4) If, after applying the formula described in paragraphs (c)(2)(i) or (c)(2)(ii) of this section, FmHA determines that a reasonable average annual cost to the applicant for delivery of service to residential type users has not been achieved, FmHA may proceed with a grant in an amount necessary to reduce such cost to not below a reasonable user rate as defined in paragraph (b)(2) of this section. Reasonable average annual cost to the applicant is defined as that which is not less than existing prevailing costs in communities, being served by an established system, having similar economic conditions. This option is only available to an applicant:

(i) Where the annual cost to the applicant for delivery of service to residential type users is subsidized by either the state, commonwealth, or territory, and

(ii) Where uniform user charges are imposed for similar classes of service throughout the service area.

(5) When the applicant will be furnishing bulk service to rural residents served by another system (entity), a grant to such applicant may also be considered for an amount to reduce the user costs on a basis comparable to that provided in this section for users of such other system. An agreement between the applicant and the other system will be obtained that clearly shows that the benefit of the grant will accrue only to the users intended to be benefited by the grant. For purposes of grant determination, all other systems which will receive bulk service may either:

(i) Be considered as part of the total by averaging the median household incomes of the systems involved and averaging the debt service portion for the particular service of the other systems. Where this method is used, a uniform user rate schedule must be established for similar classes of users. For example, all systems involved would have the same user rate schedule for residential users, or

(ii) Consider the median household income and the debt service portion for the particular service for each entity separately.

(d) The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area, communities described in paragraph (b)(2) of this section, communities used in Part II C of Form FmHA 1942-51 and the nonmetropolitan median household income for the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented on Form FmHA 1942-51 and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(e) Financial information contained in preliminary engineering reports will be prepared without taking an FmHA grant into consideration.

[50 FR 12768, Apr. 1, 1985, as amended at 50 FR 13005, Apr. 2, 1985; 50 FR 43379, Oct. 25, 1985; 52 FR 41950, Nov. 2, 1987]

§§ 1942.364—1942.365 [Reserved]

§1942.366 Application review, approval and obligation of funds.

(a) When a grant only (no FmHA loan) is being made, only those applicable provisions of review and approval procedures outlined in § 1942.5 of Subpart A of Part 1942 of this chapter will apply which are necessary to assure that:

(1) The proposed development is completed in accordance with approved plans and specifications.

(2) Grant funds are expended for authorized purposes.

(3) The applicant can comply with the terms of the grant agreement.

(b) When the grant approval official requires an appraisal, Form FmHA 442-10, "Appraisal Report—Water and Waste Disposal Systems," with appropriate supplements, may be used. Appraisal reports may be prepared by the FmHA engineer or, if desired by the grant approval official, another qualified appraiser.

(c) When an FmHA loan and grant are being processed simultaneously, the application review and approval procedures outlined in § 1942.5 of Subpart A of Part 1942 of this chapter will be followed.

(d) Grants will be approved in accordance with this subpart and Exhibit B of FmHA Instruction 1901-A which is available in any FmHA office.

(e) All grants that require National Office review will be submitted in accordance with § 1942.5(b)(1) of Subpart A of Part 1942 of this chapter.

(f) Each letter of conditions involving a grant will contain the following:

(1) Insertions which read:

(i) "Attached is a copy of Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing."

(ii) "The applicant contribution shall be considered as the first funds expended except (insert appropriate exceptions if funds from other sources make an exception necessary). After providing for all authorized costs, any remaining FmHA project funds will be considered to be FmHA grant funds and refunded to FmHA. If the amount of unused FmHA project funds exceeds the FmHA grant, that part would be FmHA loan funds.

(2) All items contained in § 1942.5(a)(1) of Subpart A of Part 1942 of this chapter applicable to the grant funding.

(3) Other relative requirements.

(g) State Directors may obligate funds including Regional Commission grant funds when they are available in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter.

(h) A copy of Form FmHA 1942-51, along with the letter of conditions and Form FmHA 1942-45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects," (including the required copy of Forms FmHA 442-14, "Association Project Fund Analysis," and FmHA 442-7, "Operating Budget") will be submitted to the National Office, Attention: Water and Waste Disposal Division, by the State

Director not later than the time the letter of conditions is issued.

§ 1942.367 [Reserved]

§ 1942.368 Borrower contracts.

The requirements of §§ 1942.4, 1942.17(l), and 1942.18 of Subpart A of Part 1942 of this chapter will be followed when concurring in agreements between grantees and third parties.

§ 1942.369 Preparation for grant closing.

(a) Section 1942.6 of Subpart A of Part 1942 of this chapter will be followed when preparing for grant closing.

(b) The requirements of § 1942.17(n)(1) of Subpart A of Part 1942 of this chapter will be followed for water and waste disposal development grants.

§ 1942.370—1942.371 [Reserved]

§ 1942.372 Grant closing and delivery of funds.

(a) Grants will be closed in accordance with instructions received from the Office of the General Counsel (OGC). FmHA policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Borrower funds will be disbursed before the disbursal of any FmHA grant funds.

(1) FmHA loan funds will be disbursed before the disbursal of any FmHA grant funds except when:

(i) Interim financing of the total estimated amount of funds needed during construction is arranged.

(ii) All interim funds have been disbursed, and

(iii) FmHA grant funds are needed before the FmHA loan can be closed.

(2) If grant funds are available from other agencies and are transferred to the Finance Office for disbursement by FmHA, these grant funds shall be disbursed in accordance with the agreement governing such agencies participation in the project.

(3) Any grant funds remaining will be handled in accordance with § 1942.17(p)(6) of Subpart A of Part 1942 of this chapter.

(b) FmHA grant funds will be disbursed by using multiple advances in accordance with § 1942.17(p)(2) of Subpart A of Part 1942 of this chapter.

(c) Payment for construction will be made in accordance with § 1942.17(p)(5) Subpart A of Part 1942 of this chapter.

(d) Form FmHA 1942-31 will be completed and executed in accordance with the requirements of grant approval and closing instructions. Both District Directors and State Directors are authorized to sign the grant agreement on behalf of FmHA. For grants that supplement FmHA loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing as provided for in paragraph (a)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds. The grant will be considered closed when Form FmHA 1942-31 has been properly executed. Incorporated as a part of this subpart is Form FmHA 1942-31 which appears as Exhibit C in the FEDERAL REGISTER.

§ 1942.373 Planning and performing development.

Planning and performing development will be handled in accordance with §§ 1942.9 and 1942.18 of Subpart A of Part 1942 of this chapter.

§ 1942.374 [Reserved]

§ 1942.375 Actions subsequent to grant closing.

Section 1942.8 of Subpart A of Part 1942 of this chapter will be followed for water and waste disposal development grants.

§ 1942.376 Grant servicing.

Grants will be serviced in accordance with §1951.215 of Subpart E and Subpart O of Part 1951 of this chapter.

[50 FR 12990, Apr. 2, 1985]

§ 1942.377 Grant cancellation.

The District Director or State Director may prepare and execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940-10. The borrower's attorney and engineer if any, should be notified of the cancellation. The borrower's attorney and engineer may be provided a copy of the notification to the applicant.

§ 1942.378 [Reserved]

§ 1942.379 Subsequent grants.

Subsequent grants will be processed in accordance with this subpart.

§ 1942.380 Regional commission grants.

Grants are sometimes made by regional commissions for projects eligible for FmHA assistance. FmHA has agreed to administer such funds in a manner similar to FmHA assistance.

(a) When FmHA has funds in the project, no charge will be made for administering commission funds.

(b) When FmHA has neither loan nor grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932 (31 U.S.C. 686). A fee of five percent (5%) of the first $50,000 of a regional commission grant and one percent (1%) of any amount over $50,000 will be paid FmHA by the commission.

(1) *Appalachian Regional Commission.* Exhibit A of this subpart will be followed in determining the responsibilities of FmHA. The Federal Cochairman and the State Director will provide each other with the necessary notification and certification.

(2) *Other regional commissions.* Title V of the Public Works and Economic Development Act of 1965 authorizes other commissions similar to the Appalachian Regional Commission. Exhibit B of this subpart will be used to develop a separate project management agreement between FmHA and the commission for each project. The agreement should be prepared by the FmHA State Director as soon as notification is received that a commission grant will be made and the amount is confirmed.

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter, except that the announcement procedure referred to in § 1942.5(d)(6) is not applicable. Regional commission grants will be obtained from the Finance Office in the same manner as FmHA funds are obtained.

§ 1942.381 Audits.

Audits will be handled in accordance with § 1942.17(q)(4) of Subpart A of Part 1942 of this chapter.

[52 FR 41950, Nov. 2, 1987]

§ 1942.382 Management assistance.

Grant recipients will be supervised to the extent necessary to assure that facilities are constructed in accordance with approved plans and specifications and to assure that funds are expended for approved purposes.

§ 1942.383 State Supplements and guides.

This Subpart may be supplemented by State Supplements and guides in accordance with § 1942.16 of Subpart A of Part 1942 of this chapter.

§ 1942.384 Delegation of authority.

The State Director is responsible for the overall implementation of the authorities contained in this Subpart and may redelegate any such authority to appropriate FmHA employees.

§ 1942.385 Special conditions under Public Law (PL) 98-8 (Emergency Jobs Bill

Each project to be funded utilizing grant funds authorized by Public Law 98-8 (Emergency Jobs Bill) will be processed in accordance with Exhibit D of this subpart. In Exhibit D of this Subpart, all references to other FmHA regulations and forms will be construed to mean the most current version of those regulations and forms and the following:

(a) Grant funds shall be made available for projects and activities in civil jurisdictions with high unemployment, or in labor surplus areas, or in political units or in pockets of poverty that are currently or should meet the criteria to be eligible under the Urban Development Grant Action (UDAG) program administered by the Department of Housing and Urban Development.

(b) Each letter of conditions that is issued utilizing FmHA loan and/or grant funds authorized by P.L. 98-8 will contain the following:

(1) Standard paragraphs in accordance with § 1942.5 (a)(1)(ii) of Subpart A of Part 1942 of this chapter, and

(2) "The (i.e. town, district, authority) shall to the extent practicable utilize FmHA funds in manner which maximizes immediate creation of new employment opportunities to individuals 1983. Such a condition will be made part of any construction contract awarded in support of FmHA funds."

(c) The following should be added to the Supplemental General Conditions of construction contracts involving Pub. L. 98-8 funds:

> To the extent practicable, the contractor shall hire needed new employees in a manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks prior to March 24, 1983.

§§ 1942.386—1942.400 [Reserved]

EXHIBITS TO SUBPART H

EXHIBIT A—MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL COCHAIRMAN OF THE APPALACHIAN REGIONAL COMMISSION AND THE ADMINISTRATOR OF THE FARMERS HOME ADMINISTRATION

Part I

Background and Purpose

1.1 The Appalachian Regional Development Act of 1965 (hereinafter also styled the Appalachian Act or ARDA) authorizes a special program to assist the Appalachian Region to meet its special problems and to promote its economic development. Section 214 of the Appalachian Act authorizes, among other assistance, grants for all or any part of the basic Federal contribution to projects under certain Federal grant-in-aid programs upon certain conditions and, in addition, authorizes supplemental grants to basic grants under such Federal grant-in-aid programs; *provided* that in no case shall the total Federal grant be for more than 80 percent of the project cost.

1.2 Section 306(a) of the Consolidated Farm and Rural Development Act (CFRDA) (7 U.S.C. 1926) authorizes Farmers Home Administration to make grants for up to 75 percent of the cost of water and waste facility projects. Section 310B of the CFRDA (7 U.S.C. 1932) authorizes Farmers Home Administration to make grants (not to exceed $50 million annually) to public bodies for measures designed to facilitate development of private business enterprises including the development, construction or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refinancing, services and fees.

1.3 The purpose of this agreement, between the Federal Cochairman of the Appalachian Regional Commission (ARC) and the Administrator of the Farmers Home Administration (FmHA), is to establish procedures, terms and conditions to facilitate cooperation between the Commission and FmHA. Under these procedures, terms, and conditions ARC will approve grant assistance pursuant to the general provisions and procedures in Sections 214, 223 and 303 of the Appalachian Regional Development Act and will transfer funds therefor to FmHA and FmHA will award, administer, monitor and report upon such grants.

1.4 This agreement is made in furtherance of the responsibilities of the ARC Federal Cochairman under Section 104 of the ARDA and authorized under Section 106(7) of the ARDA which authorizes the ARC to enter into and perform such cooperative agreements, as may be necessary to carry out its functions.

Part II

General Provisions for Transfer of Funds for Use for Projects Approved Under the Appalachian Regional Development Act, Reporting Requirements and Administrative Expenses

2.1 The Federal Cochairman, subject to such conditions and limitations as he or she may prescribe, will from time to time transfer on SF 1151, NonExpenditure Transfer Authorizations, funds to FmHA for the award of grants under Section 214 of the Act approved by the Appalachian Regional Commission pursuant to the provisions and procedures of Section 223, through the framework authority of the CFRDA. The Federal Cochairman will likewise transfer funds for the reasonable administrative expenses of FmHA incident to special basic grants approved under this Act (see Part IV). The Federal Cochairman may withdraw the unobligated balances of any funds transferred to FmHA pursuant to this agreement, or may direct a transfer of any such balances, in whole or in part, from one program account to another.

2.2 It is understood that, notwithstanding the provisions of any other laws, Appalachian assistance may be provided up to the levels of Federal participation authorized in ARDA Section 214, as set forth in this section. ARDA Section 214 provides authority for grants of Federal financial assistance under the Appalachian Act to supplement grant assistance under other Federal grant-in-aid programs including the CFRDA. This assistance can be of two types:

(1) To supplement such Federal grants by providing Appalachian Act funds to add on to such other Federal grant thereby increasing the Federal contribution above the percentage of Federal share authorized for such grant under such basic program; or

(2) Where sufficient funds are not available under a qualifying Federal grant program, to provide Appalachian Act funds to be used for all or part of the basic (or "first dollar") grants of Federal financial assistance under such program.

In either case the total Federal contribution for projects assisted under Section 214 is limited to 80 percent of total project costs.

2.3 The Commission will inform FmHA in writing of each project to be assisted; the amount approved for each, the costs and funding plan on which it premised its approval; and any specific terms, conditions, and limitations thereon not otherwise provided for in this agreement.

2.4 For each project involving transferred funds, FmHA will incorporate, in the grant agreement or other appropriate implementing document, appropriate provisions as necessary to carry out this agreement, to insure compliance with applicable Federal laws and Commission regulations, and to effectuate grant terms and conditions approved by ARC. (See paragraph 3.6(5), Part III of this agreement.) FmHA will also incorporate in each grant agreement or other implementing document, a copy of the applicable Commission approval of Appalachian Act funding and any special conditions thereof and transmit same to the grantee.

2.5 FmHA will furnish to the Commission (a) a copy of all executed grant agreements (or other implementing documents) and amendments thereto, for each project involving transferred funds; (b) copies of such information, data documents, or other materials pertaining to projects as the Commission may require; (c) information on any unusual problems (including degree of enforcement of the Davis-Bacon Act) encountered and any ameliorative action taken; (d) a final report on the costs of each program or project, in sufficient detail to permit a reasonable review of the expenditures and which includes final total eligible project costs, total ineligible project costs, and the amounts of FmHA, ARC and non-Federal funds indicating source, i.e., State or local, used to meet such project costs, as well as FmHA certification that the reported costs are final and in accord with agency program and accounting records; and (e) progress reports, including the following:

(1) Monthly Report. SF 133 "Report on Budget Execution" (OMB Circular A-34).

(2) *Quarterly Report* on the status of the funds transferred to FmHA by ARC, providing for each project the following information:

- Both FmHA and ARC project identification number
- Location of project
- Amount of ARC funds approved by ARC for the project
- Cumulative obligations
- Unobligated balance
- Unliquidated obligation
- Accrual expenditures
- Disbursements

This report shall also provide totals of the above information items so as to show current fiscal year data consistent with amounts reported on SF-133 by FmHA. The information in the report shall be provided in the form and content specified in Attachment A to this Memorandum of Agreement.

(3) *Annual Reports*

(i) Copy of SF-220, "Statement of Financial Conditions," as required by Treasury Circular No. 966, due by October 31, for the year ending September 30.

(ii) Treasury TFS Form 2108, "Statement of Unexpended Balances of Appropriations and Funds," as required by Circular No. 966, due by October 31 for the year ending September 30.

(iii) Copy of "Report on Federal Grants-in-Aid to States," as required by Chapter 7000 of Treasury Fiscal Requirements Manual, due by November 15 for the year ending September 30. (Treasury Circular 1014)

2.6 The Commission may revoke or revise its approval of any program or project if the work intended to be undertaken is not started or placed under contract within 18 months after the date of the grant agreement or contract by FmHA.

2.7 Payments by FmHA involving transferred funds will be made in accordance with this agreement and any specific terms, conditions and limitations prescribed by the Appalachian Regional Commission.

2.8 Subject to paragraphs 2.9 and 2.10, each disbursement of funds for a project receiving assistance from more than one Federal source will be deemed to be a proportionate disbursement from each source.

2.9 (1)(a) Section 224(c) of the Appalachian Act provides that "Funds may be provided for programs and projects in a State under this Act only if the Commission determines that the level of Federal and State financial assistance under Acts other than this Act or the same type of programs or projects in that portion of the State within the region, will not be diminished in order to substitute funds authorized by this Act." (b) Further, Section 224(a)(3) requires that the ARC consider the financial resources available to the State or political subdivisions or instrumentalities thereof which seek to undertake the project (i.e., the relative ability to pay).

(2) Therefore, whenever there is, or it appears that there will be, any change in project funding cost or the project funding plan including, but not limited to, underrun cases, FmHA will inform the Commission promptly of any such change or projected change. Also because of these same provisions, whenever there is such a change, the Commission may, as a result, approve an appropriate increase or decrease in the amount of transferred funds available for such project. Generally, unless the Commission specifically provides otherwise, the provisions in 2.10 shall apply to the cases specified therein.

2.10 If the actual eligible project costs are less than the estimated costs on which the Commission based its approval of a supplemental or special basic grant (or if the non-214 basic Federal grant(s) or the non-Federal funds are increased for a project without any change in eligible project costs), the amount of Section 214 funds available for the project shall be reduced to the difference between the actual eligible costs and the sum of (i) the non-214 basic grant(s) and (ii) the non-Federal funds shown in the approved Section 214 application unless, because of changed circumstances, the Commission directs otherwise.

Part III

Provisions Relating to Procedure for Review and Processing of Grant Applications and Construction Management

3.1 Applications for grant assistance under Section 214 of the Appalachian Regional Development Act (ARDA) will be submitted through the appropriate State Member to the Appalachian Regional Commission (ARC) and to the appropriate state office of the Farmers Home Administration (FmHA). Where ARDA funds will be requested under the framework of the CFRDA, ARC and FmHA will receive applications for such grant assistance. Such applications will be made on the FmHA forms appropriate to such project and on ARC Form 1. Such applications shall include, but not be limited to:

(1) Description and purpose of the project;

(2) The amount of the basic grant (and the amount of the supplemental grant, where applicable) being requested;

(3) The total project cost;

(4) The amount and source of the non-Federal share, including the method of obtaining such funds; and

(5) Whether an application for the proposed project has been filed with any Federal grant-in-aid agency, the date of filing, the identification of the agency and the current status of the application.

Such applications will be processed in general accord with the applicable procedural regulations of FmHA and ARC, unless otherwise provided in accordance with Section 223 of the ARDA.

3.2 If a project proposed to the Commission appears to qualify for funding under the ARDA and CDRDA, the Commission will request in writing that FmHA provide the following:

(A) For all Grants:

A certification that the level of FmHA financial assistance which would otherwise be available for projects in that portion of the State within the Appalachian Region will not be diminished in order to substitute ARC funds; and

(B) *For Supplemental Grants—in addition to the requirement above:*

A Notification that FmHA will approve a CFRDA grant and certification of the amount of FmHA assistance to be provided and the portion of eligible project costs which that assistance will meet; and

(C) *For Special Basic Grants—in addition to the requirement of (A) above:*

(1) A certification that the project is not incompatible with the statutory provisions and objectives of the (CFRDA);

(2) A certification that there are no FmHA funds available for the projects within the current fiscal year allocations and priorities; and

(3) Advice as to when FmHA grant funds are likely to or will become available for such project under its funding program.

(D) Should FmHA fail to give the certification in (C)(1) above, FmHA shall state specifically the reasons therefor.

3.3 The FmHA State office and the Commission will arrange to keep each other informed of the progress of their respective processing, will exchange appropriate information, and will advise each other of any apparent, significant problems which may cause delay in processing or which may preclude, delay or affect approval.

3.4 In accordance with Section 223 of the ARDA, the ARC will review the project application to determine that the project:

(1) Meets the applicable criteria under Section 224 of the ARDA;

(2) Meets the requirements of the development planning process under Section 225 of the ARDA;

(3) Will contribute to the development of the Region; and

(4) Is well designed to meet the goals and objectives established by the Commission for the development of the Region.

3.5 After consideration of the reviews conducted by FmHA and ARC, the ARC Federal Cochairman will approve grants under Section 214 and advise FmHA in writing as provided in paragraph 2.3 of Part II. Announcement of approval will be made by ARC at the time of this determination by the ARC Federal Cochairman.

3.6 The Administrator of the FmHA or his delegate shall make grant awards after ARC approval under paragraph 3.5 of this Part, and accept responsibility for:

(1) The payment of grant funds;

(2) The full and accurate reporting of grant expenditures by grantees;

(3) Provision of complete and accurate fiscal reports to the ARC. This shall be accomplished in accordance with grant terms and conditions jointly determined by FmHA and ARC;

(4) General grant administration; and

(5) The ensurance of compliance with all applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964, including regulations in 15 CFR, Subtitle A, Part 8; the National Environmental Protection Act; section 112 of the Public Works and Economic Development Act of 1971 (42 U.S.C. 3123), the Davis-Bacon Act (40 U.S.C. 27a *et seq.*); Parts II, III, IV of Executive Order 11246, regulations of the Department of Labor (41 CFR, Chapter 60); sections 224(b), 302(e) and 402 of the Appalachian Act; and ARC Code Section 200C-1 regarding employment of local labor, and any other applicable Federal laws and regulations. Copies of sections 224(b), 302 and 402 of the ARDA and of ARC Code Section 200C-1 are included as Attachment A to this agreement.

3.7 FmHA shall take all practical steps to insure that ARC's grants (in the combined amount of the basic and supplementary grants, where applicable) are obligated within the fiscal year in which they are approved.

3.8 FmHA will administer the projects, after the grants are made, in general accordance with its procedural regulations unless otherwise provided in accordance with Section 223 of the ARDA.

3.9 (A) The forms and format for the documents shall conform to the requirements in FmHA regulations. Generally, the following items shall be included:

(1) Contract documents

(2) Specifications

(3) Plans

(B) FmHA will approve the plans and specifications.

(C) FmHA will obtain a nonpollution certificate from the appropriate State agency for 306(a) type of assistance.

(D) FmHA will make periodic inspections.

(E) Contract change orders will not become effective until approved by FmHA.

(F) Final inspection will be conducted by FmHA.

Part IV

Administrative Expenses

(A) It is agreed that in cases where there are no FmHA funds involved, the total costs of services to be performed on each project by FmHA will be five percent of the ARC grant up to $50,000 and an additional one percent of any amount over the first $50,000 of the Commission grant.

(B) All funds for grant and administrative costs will be provided to FmHA by SF 1151.

(C) FmHA shall report administrative expenses in the manner similar to that use in Attachment B.

Dated: March 8, 1979.

Appalachian Regional Commission.

ROBERT W. SCOTT,
Federal Cochairman.

Dated: February 15, 1979.

Farmers Home Administration.

GORDON CAVANAUGH,
Administrator.

§ 224. *Program development criteria.*

(b) No financial assistance shall be authorized under this Act to be used (1) to assist establishements relocating from one area to another; (2) to finance the cost of industrial plants, commercial facilities, machinery, working capital, or other industrial facilities or to enable plant subcontractors to undertake work theretofore performed in another area by other subcontractors or contractors; (3) to finance the cost of facilities for the generation, transmission, or distribution of electric energy; or (4) to finance the cost of facilities for the production, transmission, or distribution of gas (natural, manufactured, or mixed).

(c) Funds may be provided for programs and projects in a State under this Act only if the Commission determines that the level of Federal and State financial assistance under Acts other than this Act for the same type of programs or projects in that portion of the State within the region, will not be diminished in order to substitute funds authorized by this Act.

§ *302. Grants for administrative expenses of local development districts and for research and demonstration projects.*

(a) The President is authorized—

(1) To make grants to the Commission for administrative expenses, including the development of areawide plans or action programs and technical assistance activities, of local development districts, but (A) the amount of any such grant shall not exceed 75 per centum of such expenses, (B) no grants for administrative expenses shall be made for a State agency certified as a local development district for a period of excess of three years beginning on the date the initial grant is made for such development district, and (C) the local development district

contributions for administrative expenses may be in cash or in kind, fairly evaluated, including but not limited to space, equipment, and services;

(2) To make grants to the Commission for assistance to States for a period not in excess of two years to strengthen the State development planning process for the region and the coordination of State planning under this Act, the Public Works and Economic Development Act of 1965, as amended, and other Federal and State programs; and

(3) To make grants to the Commission for investigation, research, studies, evaluations, and assessments of needs, potentials, or attainments of the people of the region, technical assistance, training programs, demonstrations, and the construction of necessary facilities incident to such activities, which will further the purposes of this Act. Grant funds may be provided entirely from appropriations to carry out this section or in combination with funds available under other Federal or Federal grant-in-aid programs or from any other source. Notwithstanding any provision of law limiting the Federal share in any such other program, funds appropriated to carry out this section may be used to increase such Federal share, as the Commission determines appropriate.

(b)(1) Notwithstanding the provisions of section 224(b) (2), (3), or (4), the Commission may provide assistance under this section for demonstrations of enterprise development, including site acquisition or development where necessary for the feasibility of the project, in connection with the development of the region's energy resources and the development and stimulation of indigenous arts and crafts of the region. No more than $3,000,000 shall be obligated for such energy resource related demonstrations in any fiscal year, and no more than $2,500,000 shall be obligated for such indigenous arts and crafts demonstrations.

(2) In carrying out the purposes of this Act, including section 2(b), and in implementing this section, the Federal Energy Administration, the Energy Research and Development Administration, the Environmental Protection Agency, and other Federal agencies shall cooperate with the Commission and shall provide such assistance as the Federal Cochairman may request.

(3) The Commission shall conduct a study and report on the status of Appalachian migrants in the destinations to which they have migrated, current migration patterns and implications, and the impact which the Commission program has had, and the potential for such impact, on out-migration and the welfare of Appalachian migrants. The Commission is authorized to conduct pilot projects and demonstrations within the region in connection with such study.

(4) The Commission shall conduct a study of physical hazards which are constraints on land use in the Appalachian region (with emphasis on mudslides, landslides, sink holes, and subsidence) and the risks associated with such hazards. To the extent practicable, such study shall identify high-risk hazard areas throughout the Appalachian region. The Commission shall submit its report on such study together with recommendations for means to remove or avoid such constraints on land use, to the Congress not later than twenty-four months after the enactment of this paragraph.

(c)(1) The Commission shall, as required by the President, maintain accurate and complete records of transactions and activities financed with Federal funds and report thereon to the President. The records of the Commission shall be available for audit with respect to such grants by the President and the Comptroller General or their duly authorized representatives.

(2) Recipients of Federal assistance under the provisions of this section shall, as required by the Commission, maintain accurate and complete records of transactions and activities financed with Federal funds and report thereon to the Commission. Such records shall be available for audit by the President, the Comptroller General, and the Commission or their duly authorized representatives.

(d) Not to exceed $11,000,000 of the funds authorized in section 401 of this Act for the two-fiscal-year period ending June 30, 1960, shall be available to carry out this section. Not to exceed $3,000,000 of such authorization shall be available for the purposes of subsection (b).

(e) No part of any appropriated funds may be expended pursuant to authorization given by this Act involving any scientific or technological research or development activity unless such expenditure is conditioned upon provisions effective to insure that all information, copyrights, uses, processes, patents, and other developments resulting from that activity will be made freely available to the general public. Nothing contained in this subsection shall deprive the owner of any background patent relating to any such activity, without his consent, of any right which that owner may have under that patent. Whenever any information, copyright, use, process, patent or development resulting from any such research or development activity conducted in whole or in part with appropriated funds expended under authorization of this Act is withheld or disposed of by any person, organization, or agency in contravention of the provisions of this subsection, the Attorney General shall institute, upon his own motion or upon request made by any person having knowledge of pertinent facts, an action for the enforcement of the provisions of this subsection in the district court of the United States for any judicial district in which any defendant resides, is found, or has a place of business. Such court shall have jurisdiction to hear and determine such action, and to enter therein such orders and decrees as it shall determine to be required to carry into effect fully the provisions of this subsection. Process of the district court for any judicial district in any action instituted under this subsection may be served in any other judicial district of the United States by the United States marshal thereof. Whenever it appears to the court in which any such action is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned from any judicial district of the United States.

§ 402. *Applicable labor standards.*

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting and decorating, of projects, buildings, and works which are financially assisted through the Federal funds authorized under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary of Labor shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 2 of the Act of June 13, 1934, as amended.

CHAPTER 200C OTHER PROVISIONS OF GENERAL APPLICATION

Section 200C-1 Recommended Policy on Use of Local Labor.

Section 200C-1.1 Federal Agencies. The Commission recommends that heads of Federal Departments and Agencies administering programs of construction with the aid of funds authorized by or in connection with the Appalachian Regional Development Act of 1965 adopt regulations to assure the use of local labor, to the maximum extent practicable, in the implementation of such programs. (Res. 31)

Section 200C-1.2 Contractors. The Commission recommends that—

(1) Every contractor or subcontractor undertaking to do work on any project assisted under the Act which is or reasonably may be done as onsite work, in carrying out such contract work shall give preference to qualified persons who regularly reside in the labor area as designated by the United States Department of Labor wherein such project is situated, or the subregion, or the Appalachian counties of the State wherein such project is situated, except:

(a) To the extent that qualified persons regularly residing in the area are not available;

(b) For the reasonable needs of any such contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract; or

(c) For the obligation of any such contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, *Provided* that in no event shall the number of non-resident persons employed under this subparagraph (c) exceed 20 percent of the total number of employees employed by such contractor and his subcontractors on such projects.

Every such contractor and subcontractor shall furnish the appropriate United States Employment Service offices with a list of all positions for which it may from time to time require laborers, mechanics and other employees; and

(3) Every such contractor and subcontractor shall be required to furnish periodic reports to the contracting agency on the extent to which local labor has been used in carrying out such contract work. (Res. 31)

Attachment B—*U.S. Department of Agriculture; Farmers Home Administration—Finance Office*

APPROPRIATION: 12-11x0090—APPALACHIAN REGIONAL DEVELOPMENT PROGRAM, EXECUTIVE (TRANSFER TO AGRICULTURE)

ATTACHMENT TO ACCOMPANY STANDARD FORM 133, SEPTEMBER 30, 1978

Section 214

State and location	ARC No.	Paid	Unpaid	Obligation
Alabama:				
Athens	6373		$150,000	$150,000
Brent	3743			-2,601
Central	5933	$255,000		255,000
Colbert	5366		500,000	
East Lauderdale	3985	367,000		

ATTACHMENT TO ACCOMPANY STANDARD FORM 133, SEPTEMBER 30, 1978—Continued

Section 214

State and location	ARC No.	Paid	Unpaid	Obligation
North East Alabama	4061	513,000	72,000	
Georgia:				
Barrow	5726		89,000	
Chatsworth	3518		258,000	
Chickamauga	5836		450,000	450,000
Lavonia	6182		247,000	247,000
Pettit Creek	4810		300,000	
Union	5718		104,003	
Winder	4774	90,000		
Kentucky:				
Abbott—Little	6389		150,000	150,000
Adair	5625	271,600	378,400	
Bath	4973	105,000		
Beattyville	3706	60,000	100,000	
Benham	4064	260,000		
Booneville	6108		181,000	181,000
Campton	3269A&B	2,900		
David	4892	56,000	19,000	
East Clark	4807		275,000	
Fivco	4152		238,000	
Flatwoods	4908		173,500	
Garrard	5585		100,000	
Green Taylor	6253		257,000	257,000
Greenup	3824	235,000	45,000	
Harlan	4893		8,420	
Hindman	5126	123,911	72,089	
Industrial Utility	3877	40,000	50,000	
Jackson	5797		350,000	350,000
Liberty	3976	200,000		
London	6406		300,000	300,000
Manchester-Goose Rock	4910		220,000	
Monroe	5389		180,000	
Morehead	6407		510,000	510,000
Morris Creek	3428	21,000	29,000	
Northern Rockcastle	5560		64,000	
Quicksand	3720	16,330	38,802	
Rockcastle	3658		139,000	
Rowan	4911	42,000		
Russell	4962	135,000	20,000	
Sandy Hook	4293	310,000	187,600	
Shelby	5134		120,000	
Water Gap-Bull Creek	5459		110,000	
Western Fleming	6175		217,500	217,500
Maryland:				
Corriganville	6116		523,400	523,400
Eckhart	5340		230,000	
Friendville	2850		39,200	
Frostburg	5099		408,800	
Gorman	5640		85,500	
Kitzmiller	5638		253,000	
Mississippi:				
Alcorn County	6068		115,000	115,000
Baldwyn	4880		31,800	
Blue Mountain	6070		150,000	150,000
Booneville	4879		68,200	
Byhalia	5388 A&B	100,000	56,000	
Clay	6444		60,000	60,000
ECRU Pontotoc County	6045		41,000	41,000
Golden Triangle:	4001			
Lowndes			2	
Winston			-1	
Mantachie	5378		187,000	
Marshall	5409		153,346	
Northeast Collection and Disposal System	4046		38	
Okolona	6047		110,000	110,000
Chubbeha	6445		44,000	44,000
Potts	5460		138,000	
Rienzi	4782	122,000	29,100	

ATTACHMENT TO ACCOMPANY STANDARD FORM 133, SEPTEMBER 30, 1978—Continued

Section 214

State and location	ARC No.	Paid	Unpaid	Obligatio
Saltillo	5377	40,000	72,000	
Short-Coleman	4881		300,000	
Tippah	5030		200,000	50,00
Tishomingo	4781	180,000		
Tishomingo	6069		80,000	80,00
Tremont	6095		105,000	105,00
New York:				
Cattaraugus	4281		225,160	
Cortlandville	5004	30,000		
Erwin Shell	6173		152,000	152,00
Franklinville	4914		120,000	
Hobart	6222		109,425	109,42
Hornell	5620	376,000		
Hornell	5940		400,000	400,00
Industrial waste	5663		240,000	
Kirkwood	5324	135,000		
Marathon	4283 B		67,434	
Port Dickinson	5511	104,800		
Salamanca	5006		395,000	
Schuyler	4721		15,000	
Sidney	5442		438,120	
Tompkins	3010		20,048	
Waverly	4951		400,000	
Watkins Glen	6080		48,000	48,00
Wayland	3724			48,00
North Carolina:				
Arlington	3203	10,500	42,930	
Banner Elk	5290		311,000	
Blowing	4506	300,000		
Buncome County	5295		350,000	
Burke	4508		300,000	
Hudson	5960		45,000	45,00
Morganton	5958		264,800	264,80
Newland	4889A&B		205,000	
Salem	4513	325,000		
Valdese	5289		324,000	
Walnut Cove	3205		106,426	
Yadinville	3204	48,867	28,603	
Ohio:				
Bowerston	6119		339,000	33,00
Byseville-Cuernsey	6197		150,000	150,00
Carrollton	3021	25,000		
Greenfield—phase I	4275		200,000	
Muskingum County	4260		125,000	
North Zanesville	4246		125,000	
Perry	3741		300,000	
Village of Zoar	4563		139,000	
Washington County	4329	107,520		
Pennsylvania:				
Barkeyville Borough	6023		398,400	398,40
Bedford	3637		35,000	
Berlin	6013		370,000	370,00
Curryville	6103		19,000	19,00
Indiana	5489		330,000	330,00
Lewis Run	4718	346,750	181,250	
Reynoldsville	4775		225,000	
Somerset Borough	5695		181,000	
Woodland	6029		206,955	206,95
South Carolina:				
Enoree	5738	51,000		
Greer	5724		455,200	
Honea Path	6428		143,500	143,50
Walhalla	6431		480,000	480,00
Tennessee:				
Alcoa/Blount	5611		500,000	
Anderson County	4248	1,000,000		
Bean Station	6102		106,590	106,59
Big Creek	6123		261,300	261,30
Bradley	4862		490,000	

ATTACHMENT TO ACCOMPANY STANDARD FORM 133, SEPTEMBER 30, 1978—Continued

Section 214

State and location	ARC No	Paid	Unpaid	Obligation
Bradley Industrial Park	6421		490,000	490,000
Bristol	5702		500,000	
Bristol	4006		625,000	
City of Clinton	4175	240,000		
Clay/Jackson	5097	98,000		
Cleveland	6211		146,390	146,390
Clinton Community Center	4891	240,000		
Clinton Wastewater	6148		146,000	146,000
Clinton Water	6146		272,000	272,000
Coffee County	4182		10	
Collegedale	5652		59,500	
Crossville	3480	150,000	50,000	
Decatur	6122		550,000	550,000
Dixie Lee	6101		143,500	143,500
Franklin Industrial	4858		522,000	
Gatlinburg	5655	395,500		
Greene County	6300		159,000	159,000
Greenville	6297		132,500	132,500
Greenville	5653		160,100	
Hamilton	5819		91,200	
Hawkins County	6100		150,000	150,000
Hermitage Springs	5824		86,250	
Jackson Industrial	5825	18,000	28,080	
Jasper	5827		500,000	
Johnson City	5826		500,000	
Johnson City, Phase II	3952		363,900	
Kingsport	6299		500,000	500,000
Knox County, Phase II	5613	199,500	380,500	
Knox County, Phase III	6150		500,000	500,000
Lafollette	6151		501,000	501,000
Lenior City, Phase II	4907		213,400	
Macon County, Part B	4913	15,000		
Madisonville	6298		400,000	400,000
Madisonville	5654	260,000		
McMinnville	6126		500,000	500,000
Morristown-Water	4906	196,200		
Mountain City	3969	258,000		
North Anderson	5701		720,000	
Oliver Springs	5822	20,000	204,000	
Pickett County	6137		463,000	463,000
Pikeville Industrial	4258	105,000		
Polk County	5704		174,245	
Rockwood Library	5690		159,100	
Rockwood Water	6147		500,000	500,000
Rutledge	5699		382,300	
Sevierville	6210		291,500	291,500
Smithville	5703		500,000	
Sneedville	4895	100,000		
South Carthage Sewer	6149		500,000	500,000
Sparta Sewer	4896		420,160	420,160
Tri-City Airport	5612		200,000	200,000
Tullahoma Industrial	5823	59,500		
U of Tennessee Space Institute:				
Research	4193		94,200	
Water Storage	4898	26,100		
Union County	5705		281,000	
Valley Industrial	5706		276,000	
Washington	2000		54,000	
West Hamblen County	6138		500,000	500,000
Virginia:				
Bath	5773		101,300	
Big Stone	6167		1,020,200	1,020,200
Bluefield	4837		47,855	
Botetourt County	3895		350,000	
Buchanan County	5774		750,000	
Buchanan County	3897 A&B		2,418,400	
Cumberland	6170		120,200	120,200
Duffield	5964		776,377	776,377
Fincastle	4850	80,905	50,010	

ATTACHMENT TO ACCOMPANY STANDARD FORM 133, SEPTEMBER 30, 1978—Continued

Section 214

State and location	ARC No.	Paid	Unpaid	Obligat
Floyd County landfill	6384		127,300	127,30
Foote Mineral	4842		13,420	
Gate City	6168		208,100	208,10
Giles	5781		65,200	
Highland County	4841	107,000		
Hillsville	6169		259,700	259,70
Ivanhoe	6005		20,000	20,00
John Flannagan	3896		322,500	
Norton-Wise	4225		283,000	
Pound	2152		75,000	
Pulaski County	5775	743,000	257,000	
Pulaski County	4838	272,800		
Rural Retreat	6166		76,900	76,90
Troutville	5779		119,900	
Washington County	6385		958,400	958,40
West Virginia:				
Chestnut Ridge	4509	15,000		
Clay Battelle	5285		189,000	
Elkins Road	6160		522,000	522,00
Fenwick Mountain	5313	137,000	100,000	100,00
Gauley River	6192		143,500	143,50
Hamrick	4364	24,500		
Hodgesville	5314		122,000	
Masontown	4361		112,000	
Middle Bourne	6163		455,000	455,00
Muddlety-Glade	6194		446,000	446,00
Page-Kincaid	6159		582,000	582,00
Parsons	3103		194,000	
Paw Paw	4878		84,500	
Wilderness	5273		320,000	
Williamson	6000		519,000	519,00
Total grants		10,217,203	47,263,937	20,950,33
Total line 4A (-)				2,54

Administrative expenses

12-11X0090 (schedule A)				
Current year (22 projects)	0		$92,489	92,48
Prior year (24 projects [1])	84,880		19,109	4
12-135/62051 (schedule B) current year	0		0	
Total				
Total line 8				21,045,48
Total line 13C			47,375,535	
Total line 14		$10,301,883		
Georgia: Barrow [1]	5726	2,890		
Kentucky: Rockcastle [1]	3658		1,440	
Mississippi:				
Clay	6444		2,600	2,600
Marshall [1]	5409	3,533		
Oktibbeha County	6445		2,200	2,20
New York:				
Erwin Shell	6173		3,520	3,52
Franklinville [1]	4914	3,200		
Hobart	6222		3,094	3,094
Hornell [1]	5620	5,760		
Hornell	5940		6,000	6,000
Industrial Waste [1]	5663	4,400		
Watkins Glen	6080		2,400	2,400
Ohio: Washington County [1]	4329	328		
Pennsylvania: Somerset Borough [1]	5695	3,810		
South Carolina: Greer [1]	5724	6,552		
Tennessee:				
Anderson County [1]	4248	10,000		
Bean Station	6102		3,066	3,066
Bradley	6421		6,900	6,900
Bristol [1]	5702		7,000	

ATTACHMENT TO ACCOMPANY STANDARD FORM 133, SEPTEMBER 30, 1978—Continued

Section 214

State and location	ARC No	Paid	Unpaid	Obligation
Clay/Jackson [1]	5097	2,980		
Cleveland	6211		3,464	3,464
Clinton Wastewater	6148		3,460	3,460
Clinton Water	6146		4,720	4,720
Collegedale [1]	5652		2,595	
Cumberland County	6209		2,175	2,175
Gatlinburg [1]	5655	5,955		−40
Greene County	6300		3,590	3,590
Greenville	6297		3,325	3,325
Greenville [1]	5653	3,601		
Hamilton [1]	5819	2,912		
Hawkins County	6100		3,500	3,500
Johnson [1]	5826	7,000		
Kingsport	6299		7,000	7,000
Knox [1]-Phase II	5613	7,800		
Knox-Phase III	6150		7,000	7,000
Lenoir City [1]-Phase II	4907		4,134	
McMinnville	6126		7,000	7,000
Rockwood Library [1]	5690	3,591		
Tri-City Airport	5612		4,000	4,000
Tullahoma Industrial [1]	5823	2,595		
Valley Industrial [1]	5706	4,760		
West Hamblen County	6138		7,000	7,000
Virginia:				
Bath [1]	5773	3,013		
Cumberland	6170		3,202	3,202
Floyd County Landfill	6384		3,273	3,273
West Virginia: Parsons [1]	3103		3,940	
Total		84,680	111,598	92,449

[1] Prior year obligations.

EXHIBIT B—PROJECT MANAGEMENT AGREEMENT

FMHA INSTRUCTION 1942-H

Project No.

Project Management Agreement Between the ——— Regional Commission and the Farmers Home Administration, Department of Agriculture Pertaining to —————. (grantee) ——— County, ———.

I. Introduction

A. The ——— Regional Commission is providing a basic grant for ——— (purpose) to ——— (grantee), and the U.S. Department of Agriculture, Farmers Home Administration (FmHA) has approved and will administer that grant. The FmHA has determined that funds cannot be made available under its funding program for this fiscal year for the project although it meets all the requisites for assistance under Section 306(a) of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926). In order to accomplish these purposes, the ——— Regional Commission's Federal Cochairman and the FmHA State Director hereby enter into this Memorandum of Understanding which is in accordance with 31 U.S.C. 686.

B. This agreement is intended to cover the application phase, construction phase, and final audit.

II. General

A. *Project Cost.* The project costs for the purposes of this agreement shall include the costs of construction, technical services, legal services, land acquisition, permits and rights-of-way, interest during construction, and contingencies.

B. *Grant.* The ——— Regional Commission shall make a basic grant of $——— up to but not exceeding ——% of the total cost of the project. These funds will be transferred to the Treasury Account of the Farmers Home Administration by Standard Form 1151, "Nonexpenditure Transfer Authorization."

C. The undersigned FmHA State Director on behalf of FmHA, in concurring with this Project Management Agreement, hereby assures the Federal Cochairman that: 1. The estimated cost of the project is reasonable and the basic grant, with the funds to be supplied by the applicant, is, in FmHA's judgment, sufficient to complete the project.

2. The funds to be supplied by the applicant are available or FmHA is reasonably satisfied that the applicant has the capability of supplying such funds.

3. FmHA is reasonably satisfied that the facility will be properly and efficiently administered, operated, and maintained and that the applicant will provide sufficient funds to assure the successful and continuing operation of the facility.

D. The ——————— (grantee) is subject to Executive Order 11246 and will be required to evidence compliance by execution of the following:

1. Form FmHA 400-1, "Equal Opportunity Agreement."

2. Form FmHA 400-4, "Nondiscrimination Agreement."

E. The ——————— (grantee) shall execute assurances of nonrelocation.

III. Construction Management

A. The forms and format for the documents shall conform to the requirements in FmHA Instruction 1942-A. Generally, the following items shall be included.

1. Contract Documents
2. Specifications
3. Plans

B. FmHA will approve the plans and specifications.

C. FmHA will obtain a certification of adequacy from the Federal Environmental Protection Agency.

D. FmHA will obtain a non-pollution certificate from the ——————— (state) ——————— (agency).

E. FmHA will make monthly inspections.

F. Contract change orders will not become effective until approved by FmHA.

G. Final inspection will be conducted by FmHA.

IV. Financial Management

A. Financial Management of the project shall be according to FmHA Instruction 1942-A.

B. FmHA will provide the ——————— Regional Commission with a copy of the audit report.

C. If actual costs fall below the costs on which the grant was calculated, the Federal and non-Federal shares will be reduced proportionately.

D. FmHA will conform to the financial reporting requirements for transferred funds as required by the attached copy of "Reporting of Funds Transfer by Participating Agencies."

V. Compensation

Services rendered by FmHA for the processing and administration of Commission grants in cases where neither FmHA loan nor grant funds are involved shall be on a reimburseable basis. Reimbursement will be based on five percent (5%) of the amount of the grant up to $50,000 and an additional one percent (1%) of any amount over the first $50,000 of the Commission grant. The full amount of the reimbursement will be transferred to FmHA at the time the grant funds are transferred to FmHA.

VI No provisions in this agreement shall abrogate the legal reguirements of administrative responsibilities as set forth in the Consolidated Farm and Rural Development Act or Section 509 of the Public Works and Economic Development Act of 1965, as amended.

For the ——————— Regional Commission.

——————————

(name) Federal Cochairman ————, 19—.

For the Farmers Home Administration, USDA

——————————

(name) State Director ————, 19—.

Exhibit C—Association Water or Sewer System Grant Agreement

United States Department of Agriculture
Farmers Home Administration

This Agreement dated ———————, 19—, between

————————————————————

a public corporation organized and operating under

————————————————————

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor."

WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under its jurisdiction at an estimated cost of $——— and has duly authorized the undertaking of such project.

Grantee is able to finance not more than $——— of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of $——— has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed $——— or ——— percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed —— percent of the development costs, as defined by applicable Farmers Home Administration instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution date ————, 19—, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute Form FmHA 400-1, "Equal Opportunity Agreement," and to execute Form FmHA 400-4, "Nondiscrimination Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant progrms or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to tansfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

L. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the FmHA.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to FmHA sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and condition of the property and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. In construction contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

U. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 1875C-9) and Section 308 of the Water Pollution Control Act (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

GRANTOR AGREES THAT IT:

A. Will make available to Grantee for the purpose of this Agreement not to exceed $——— which it will advance to Grantee to meet not to exceed —— percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

TERMINATION OF THIS AGREEMENT

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized ——————— and attested and its corporated seal affixed by its duly authorized

————————————

————————————

————————————

Attest:

————————————

By————————————

By————————————

(Title)————————————

(Title)————————————

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By————————————

(*Title*)————————————

EXHIBIT D—REGULATIONS FOR GRANT APPROVALS UTILIZING FUNDS MADE AVAILABLE UNDER PUB. L. 98-8

I. General

(a) This Exhibit outlines the policies and authorizations and sets forth the procedures for making and processing grants to assist in financing the development cost of domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users. Farmers Home Administration (FmHA) will maintain continuous liaison and coordination with State and substate planning district officials. FmHA shall cooperate fully with appropriate State agencies in making grants in a manner which will assure maximum support of the State's strategies for development of rural areas. State and substate A-95 agencies may recommend priorities for applications. FmHA will give due consideration to all A-95 agency review comments and priority recommendations in selecting applications for funding. FmHA State Directors are reminded that funds allocated for use as prescribed in this subpart are to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in the benefits of these programs on as equal a basis as other residents of the State. This is intended to include an equal application of the outreach activities of FmHA County and District Offices.

(b) It is the policy that the County Office will normally be the entry point for preapplications and serve as the local contact point. However, applications will be filed and grants will be processed to the maximum extent possible by the District Office staff. The State Office staff will monitor grant making and servicing and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA regulations. The District Director will supply information on grant activity within the County Office service area to the County Supervisor at key points throughout the grant making process.

(c) It is the policy of FmHA to extend its financial program without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (possess capacity to enter into legal contract.)

II. Processing Applications and Docket Preparation

(a) Preapplications and applications for water and waste disposal development grants will be processed in accordance with § 1942.2 of Subpart A of Part 1942 of this chapter.

(b) Grant dockets will be prepared in accordance with this Subpart and applicable portions of §§ 1942.17, 1942.18 and 1942.19 of Subpart A of Part 1942 of this chapter.

III. Applicant Eligibility and Priority

(a) *Eligibility.* Applicant eligibility shall be determined in accordance with § 1942.17(b) of Subpart A of Part 1942. Also grants shall not be made in connection with any project unless the project:

(1) Will serve a rural area which, if such project is carried out, is not likely to decline in population below that for which the project was designed.

(2) Is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area. Also, water systems must have sufficient capacity to provide for reasonable fire protection.

(3) Is necessary for orderly community development consistent with a comprehensive community water, waste disposal, or other development plan of the rural area in which the project is located.

(b) *Applicant priorities.* Preference for grant funds will be given to applicants and projects in accordance with § 1942.17(c) (1) and (2) of Subpart A of Part 1942 of this chapter.

IV. Use of Grant Funds

Funds may be used only for the following purposes:

(a) Domestic and water waste facilities—install and improve community domestic water and waste disposal facilities including:

(1) Facilities for the development, storage, treatment, purification and distribution of water.

(2) Sanitary sewer facilities including collection lines, treatment plants, outfall lines, disposal fields, and stabilization ponds.

(3) Storm sewers for the collection and disposal of surface drainage.

(4) Solid waste disposal projects including facilities for the collection, treatment, or disposal of human, animal, agricultural and other wastes. Items such as garbage trucks and equipment, sanitary landfills, and incinerators are included.

(b) Purchase or rent equipment necessary to extend, protect, develop or utilize facilities. Such purchases or rentals must be necessary to provide efficient service, to enable the facility to remain in operation, and to fulfill the purposes and intent of the loan and/or grant. However, funds may not be used to pay any annually recurring costs, including purchases or rentals, that are normally considered to be operation and maintenance expenses.

(c) Acquire land and rights. Acquiring land, interest in land, and rights such as water rights, leases, permits, right-of-way, and other evidence of land or water control which are necessary for development of the facility.

(d) Buildings, fences, secondary facilities, and relocation.

(1) Construct buildings of modest design, size, and cost, and fences essential to the successful operation or protection of authorized facilities and to provide storage for tools and supplies needed to operate the facility.

(2) Construct secondary facilities such as gas or electric service lines to convey fuel or energy for, or utilities for, primary facilities.

(3) Construct or relocate roads, bridges, utilities, fences, and other public improvements or relocate roads, bridges, utilities, fences, and other private improvements.

(e) Services and fees. Pay costs incidental to establishment of such facilities or for services necessary to accomplish any of the above purposes, including, but not limited to:

(1) Paying fees or other legal expenses of establishing water rights through appropriation, agreement, permit, or court decree.

(2) Paying for other services necessary in planning and completing the facilities to be financed.

(3) Acquiring a water supply by purchasing of water stock or membership in a water users association.

(f) FmHA grant funds may be used on projects where other types of financial assistance are available on all or part of the project, provided the other assistance is on reasonable rates and terms. In such cases the maximum percentages allowed under other agencies' authorities will apply to their participation in the project. However, the FmHA grant may not exceed seventy-five percent (75%) of the eligible project development cost. The need for FmHA grant funds must meet the requirement of paragraph VI of this Exhibit after considering all project financing.

V. Grant Limitations

(a) Grant funds may not be used to:

(1) Pay for the construction of any new combined storm and sanitary sewer facilities.

(2) Pay any annually recurring costs that are generally considered to be operation and maintenance expenses.

(3) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale.

(4) Purchase fire trucks, hoses, and other firefighting equipment or construct housing for such equipment.

(5) Pay rental for the use of equipment or machinery owned by the association.

(6) Pay for salesrooms or other purposes not directly related to operation and maintenance of the facility being installed or improved.

(7) Purchase existing systems.

(8) Refinance existing indebtedness.

(9) Pay any portion of the cost of a facility when the annual reserve based on a typical year exceeds one-tenth of the average annual debt service requirement unless State regulatory agencies require a larger reserve, or when it is anticipated that facility replacement costs on a relatively short-term basis will require a higher reserve.

(10) Pay interest.

(11) Pay any portion of the cost of a facility which is not located in a rural area.

(b) An FmHA development grant may not be made in excess of seventy-five percent (75%) of the eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

VI. Determining the Need for Development Grants

(a) FmHA District Directors are responsible for determining applicant eligibility for grants and the amount of such grants. Form FmHA 1942-51, "Water and Waste Disposal Development Grant Summary," will be used to determine the amount of FmHA grant assistance for which the applicant qualifies. A separate form will be used to record the determination of FmHA grant assistance for each water, sewer collection and treatment, solid waste, and storm drainage project. A copy of each such form along with the letter of conditions and Form FmHA 1942-45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects," will be submitted to the National Office, Attention: Water and Waste Disposal Loan Division by the State Director not later than the time of issuance of the letter of conditions.

(b) Grants will be used for water and waste disposal projects serving the most financially needy communities to reduce user costs to a reasonable level for farmers, ranchers, and rural residents. Other rural users whose needs are met or, if there is no meter, could be met by a single residential-size water meter may also be considered eligible. For example, a user on a waste system may be considered for a grant when the water needs of the waste user are met or could be met by such residential-size meter. This method of computing grants will be used for all water and waste disposal projects. Reasonable user rate is defined as that which is not less than existing prevailing rates in communities being served by an established system constructed at similar cost per user and having similar economic conditions. User costs shall include charges, taxes, and assessments attributable to the project. An exception to the reasonable user rate may be granted by the FmHA National Office in justifiable cases for areas of extremely low income when it is necessary to meet the needs of a particular community. Such an exception will only be considered when comparable systems are not available or the user rates from the comparable systems appear to be too high for the average user of the applicant, and the median income in the applicant service area is less than $4,000. When it is determined that such an exception should be considered, the FmHA State Director will submit information to the National Office concerning health conditions of the area, median income of the service area, and user rates and median incomes of other like or most similar communities in the region, employment conditions, and any other information to justify the recommendation for the exception.

(1) Grants may not exceed seventy-five percent (75%) of the eligible project development costs listed in paragraph IV of this Exhibit.

(2) Ordinarily, an applicant will be considered for grant assistance only when the debt service portion of the average annual user cost for either water or waste service, for only those users in the applicant service area, exceeds the following percentages of median incomes:

(i) .75 percent when the median income is under $6,000.

(ii) 1.00 percent when the median income is $6,000 to $10,000.

(iii) 1.25 percent when the median income is over $10,000.

Median income will be determined in accordance with paragraph VI(b)(6). Except as provided for in paragraphs VI(b) and (b)(4), the grant will be limited to an amount necessary to reduce the debt service portion of the user cost to the applicable percent level listed above. If the median income is not available, the average income may be used. This procedure shall not be used to result in a rate below that deemed to be reasonable as defined in paragraph VI(b). However, an exception to the reasonable user rate may be authorized by the FmHA National Office in accordance with paragraph VI(b).

(3) When the applicant will be furnishing bulk service to rural residents served by another system, a grant to such applicant may also be considered for an amount to reduce the user costs on a similar basis as provided in this paragraph for users of such other system. An agreement between the applicant and the other system (entity) will be obtained that clearly shows that the benefit of the grant will accrue only to the users intended to be benefited by the grant. For purposes of grant determination, all other systems which will receive bulk service may either:

(i) Be considered as part of the total by averaging the median incomes of the systems involved and averaging the debt service portion for the particular service of the other systems; or

(ii) Consider the median income and the debt service portion for the particular service for each entity separately.

(4) If, after applying the formula described in paragraph (VI)(b)(2), FmHA determines that a reasonable user cost has not been achieved due to unusually high operation and maintenance costs, construction or water acquisition costs, or other factors, FmHA may proceed with a grant in an amount necessary to reduce the user cost to not below a reasonable level as defined in paragraph VI(b). However, an exception to the reasonable user rate may be authorized by the FmHA National Office in accordance with paragraph VI(b).

(5) If, after applying the formula described in paragraph (VI)(b)(2), FmHA determines that a reasonable average annual cost to the applicant for delivery of service to residential type users has not been achieved, FmHA may proceed with a grant in an amount necessary to reduce such cost to not below a reasonable user rate as defined in paragraph (VI)(b) provided this option is only available to an applicant that imposes uniform user charges for similar classes of service throughout their service area. Reasonable average annual cost to the applicant is defined as that which is not less then existing prevailing costs in communities, being served by an established system, having similar economic conditions.

(6) The median income in the applicant community or those reference communities used in comparing the proposed system with similar systems will be determined by the FmHA District Director as follows:

(i) The median income will be determined from the U.S. Department of Commerce, Bureau of Census, Publication PC (1)-C series or from reliably extracted unpublished Bureau of Census data for individual enumeration Districts; or

(ii) For those projects where the FmHA District Director has reason to elieve that the census data is not an accurate representation of the median income within the area to be served, the District Director may determine the median income taking into consideration the following:

(A) Data from responsible public or private sources.

(B) The District Director's knowledge of the community based on availability FmHA data gained through individual loans.

(C) The results of a survey conducted by the applicant.

(D) By using a combination of the above.

(7) Preliminary engineering reports and suggested operating budgets included herein will be prepared without taking a grant into consideration.

VII. Application Review and Approval

(a) When an FmHA loan and grant are being processed simultaneously, the application review and approval procedures outlined in § 1942.5 of Subpart A of Part 1942 will be followed. Grants will be approved in accordance with this Exhibit and FmHA Instruction 1901-A which is available in any FmHA Office. When a grant only (no FmHA loan) is being made, only those provisions will apply which are necessary to assure:

(1) That the proposed development is completed in accordance with approved plans and specifications.

(2) That grant funds are expended for authorized purposes.

(3) That the terms of the grant agreement are complied with.

(b) Each letter of conditions involving a grant will contain the following:

(1) An item which reads:

"You shall execute the attached Form FmHA 1942-31, 'Association Water or Sewer System Grant Agreement.' "

(2) All items contained in § 1942.5(a)(1) of Subpart A of Part 1942 of this chapter applicable to the grant funding.

(3) Other relative requirements.

VIII. Preparation of Appraisal Reports

When the grant approval official requires an appraisal, Form FmHA 442-10, "Appraisal Report—Water and Waste Disposal System," with appropriate supplements may be used. Appraisal reports will be prepared by the FmHA engineer or, if desired by the grant approval official, another qualified appraiser.

IX. Borrower Contracts

The requirements of § 1942.17 (1) and (3) of Subpart A of Part 1942 of this chapter will be followed when concurring in agreements between grantees and third parties.

X. Grant Approval and Obligating Funds

(a) FmHA State Directors are authorized to approve grants being made in accordance with this Exhibit and Exhibit B of FmHA Instruction 1901-A which is available in any FmHA Office.

(b) State Directors may obligate funds including Regional Commission grant funds when they are available, in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter.

XI. Preparation for Grant Closing

Section 1942.6 of Subpart A of Part 1942 of this chapter will be followed when preparing for grant closing.

XII. Grant Closing and Delivery of Funds

(a) Grants will be closed in accordance with instructions received from the Office of the General Counsel (OGC). FmHA policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Borrower funds will be disbursed before the disbursal of any FmHA grant funds.

(1) FmHA loan funds will be disbursed before the disbursal of any FmHA grant funds except when:

(i) Interim financing of the total FmHA loan amount is arranged,

(ii) All interim funds have been disbursed, and

(iii) FmHA grant funds are needed before the FmHA loan can be closed.

(2) The FmHA loan should be closed as soon as possible after the disbursal of all interim funds; however, the loan should be closed no later than construction completion. If grant funds are available from other agencies and are transferred to the Finance Office for disbursement by FmHA, these grant funds shall be disbursed in accordance with the agreement governing such agencies' participation in the grant. Any grant funds remaining will be handled in accordance with § 1942.17(p)(6) of Appendix A of Subpart A of Part 1942.

(b) FmHA grant funds will be disbursed by using multiple advances in accordance with § 1942.17(p)(2) of Subpart A of Part 1942.

(c) Form FmHA 1942-31 will be completed and executed in accordance with the requirements of approval and closing instructions. Both District Directors and State Directors are authorized to sign the grant agreement on behalf of FmHA. For grants that supplement FmHA loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing as provided for in paragraph XII(a)(1) the grant will be closed not later than the delivery date of the first advance of grant funds. The grant will be considered closed when Form FmHA 1942-31 has been properly executed. Incorporated as a part of this regulation is Form FmHA 1942-31 which appears as Exhibit C to Subpart H of Part 1942 in the FEDERAL REGISTER.

XIII. Planning and Performing Development

Planning and performing development will be handled in accordance with §§ 1942.9 and 1942.18 of Subpart A of Part 1942 of this chapter.

XIV. Actions Subsequent to Loan Closing

Section 1942.8 of Subpart A of Part 1942 of this chapter will be followed for water and waste disposal development grants.

XV. Grant Servicing

Grants will be serviced in accordance with Subpart E of Part 1951 of this Chapter.

XVI. Grant Cancellation

The District Director or State Director may prepare and execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940-10. The borrower's attorney and engineer, if any, should be notified of the cancellation. The borrower's attorney and engineer may be provided with a copy of the notification to the applicant

XVII. Subsequent Grants

Subsequent grants will be processed in accordance with this Exhibit.

XVIII. Regional Commission Grants

Grants are sometimes made by regional commissions for projects eligible for FmHA assistance. FmHA has agreed to administer such funds in a manner similar to FmHA assistance.

(a) When FmHA has funds in the project, no charge will be made for administering commission funds.

(b) When FmHA has neither loan nor grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932 (31 U.S.C. 686). A fee of five percent (5 percent) of the first $50,000 of a regional commission grant and one percent (1 percent) of any amount over $50,000 will be paid FmHA by the commission.

(1) Appalachian Regional Commission. Exhibit A of Subpart of H of Part 1942 will be followed in determining the responsibilities of FmHA. The Federal Cochairman and the State Director will provide each other with the necessary notification and certification.

(2) Other regional commissions. Title V of the Pubic Works and Economic Development Act of 1965 authorizes other commissions similar to the Appalachian Regional Commission. Exhibit B of Subpart H of Part 1942 of this chapter will be used to develop a project management agreement between FmHA and the commission separately for each project. The agreement should be prepared by the FmHA State Director as soon as notification is received that a commission grant will be made and the amount is confirmed.

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter, except that the announcement procedure refered to in § 1942.5(d)(6) is not applicable. Regional commission grants will be obtained from the Finance Office in the same manner as FmHA funds are obtained.

XIX. Management Assistance

Grant recipients will be supervised to the extent necessary to assure that facilities are constructed in accordance with approved plans and specifications and to assure that funds are expended for approved purposes.

XX. State Supplements and Guides

This Exhibit may be supplemented by State Supplements and guides in accordance with § 1942.16 of Subpart A of 1942 of this chapter.

XXI. Delegation of Authority

The State Director is responsible for implementing the authorities contained in this Exhibit and may redelegate such authority to appropriate FmHA employees.

((7 U.S.C. 1989) Title I of Pub. L. 98-8; 7 CFR 2.23, 2.70)

[48 FR 20218, May 5, 1983, as amended at 50 FR 7327, Feb. 22, 1985]

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

SOURCE: 43 FR 28442, June 30, 1978, unless otherwise noted.

§ 1942.401 Purpose.

This subpart prescribes Farmers Home Administration (FmHA) policies and procedures for making:

(a) Watershed (WS) loans and watershed (WS) advances for works of improvement in a watershed project, and

(b) Resource conservation and development (RCD) loans for measures or projects needed to implement the RCD area plan to achieve objectives in an RCD area.

§ 1942.402 Policy.

(a) FmHA will make WS and RCD loans available to sponsoring local public bodies, agencies, and nonprofit organizations to assist them in obtaining the local cost of WS works of improvement and RCD measures. FmHA will assist the local sponsors and the Soil Conservation Service (SCS) in making loans from SCS construction funds as WS advances when needed for the development of future water supplies or for site preservation.

(b) FmHA will coordinate application processing with the SCS and other appropriate State and Federal agencies.

[43 FR 28442, June 30, 1978, as amended at 48 FR 29120, June 24, 1983]

§ 1942.403 Authorities, responsibilities and delegation of authority.

(a) SCS provides technical and financial assistance to sponsoring local organizations for developing WS and RCD area plans and for individual

RCD measures or projects and watershed works of improvement.

The watershed work plan for developing, operating, and maintaining watershed works of improvement must be agreed upon by sponsoring local organizations and SCS. When approved, it is the basis for extending technical and cost-sharing assistance from watershed funds. The RCD area plan is prepared for the development of the RCD area by sponsoring local organizations with assistance from SCS and other agencies, endorsed by the Governor or by the agency designated by the Governor, and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures or projects to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(b) FmHA receives and processes applications for WS loans and SCS WS advances and RCD loans and makes and services such loans and advances.

WS loans are made by FmHA from either Pub. L. 534 (78th Cong.) funds authorized in the Flood Control Act of 1944 or Pub. L. 566 (83d Cong.) funds authorized in the Watershed Protection and Flood Prevention Act of 1954 to cover a part or all of the local cost for a watershed work of improvement.

(c) WS loans and WS advances may be made to project sponsors in watershed project areas for which:

(1) A watershed work plan has been approved administratively or by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and by the Committee on Agriculture of the House of Representatives, and

(2) Federal assistance has been authorized for the installation of works of improvement by the Administrator of SCS.

(d) RCD loans may be made in areas authorized for RCD program assistance by the Secretary of Agriculture and for which an RCD plan design or area plan has been accepted by the State SCS conservationist.

(e) Delegation of authority. The State director is authorized to approve WS and RCD loans subject to limitations in FmHA instruction 1901-A and conditions of this subpart. The State director is authorized to redelegate authority in accordance with this subpart to the chief, community programs; or other members of the State office staff.

(f) SCS is responsible for providing technical and financial assistance to sponsoring local organizations for planning and developing WS and RCD areas. This includes development of WS and RCD plans and WS works of improvement and RCD measures or projects.

(g) FmHA is responsible for making and servicing WS loans and advances and RCD loans.

(h) The SCS—FmHA agreements in exhibits A and B to this subpart include further responsibilities and functions of SCS and FmHA in WS and RCD areas.

§ 1942.404 Definitions.

(a) *Watershed (WS) project.* An authorized area in which watershed assistance from SCS and other U.S. Department of Agriculture (USDA) agencies including WS loans and advances may be provided. Watershed assistance is provided in two types of watershed projects identified by the public law under which they are authorized.

(1) *Pub. L. 534 Watershed.* One of the eleven watersheds authorized by Congress in the Flood Control Act of 1944, Pub. L. 78-534 as amended.

(2) *Pub. L. 566 Watershed.* A small watershed of not more than 250,000 acres authorized in accordance with the Watershed Protection and Flood Prevention Act, August 4, 1954, Pub. L. 83-566 as amended.

(b) *Resource conservation and development (RCD) area.* An area in which RCD program assistance from SCS and other USDA agencies has been authorized. It usually includes all or part of more than one county and may be coterminous with substate planning and development areas. RCD loans are authorized under section 32 of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011).

(c) *Watershed plan.* A plan agreed upon by sponsoring local organizations and the SCS for developing, operating and maintaining watershed works of improvement.

(d) *R.C. & D. measure plan.* A plan document for a land area, directly controled or under the jurisdiction of the sponsoring public bodies or public nonprofit organization. It involves one of the measure purposes eligible for R.C. & D. cost-sharing assistance. The document sets forth what will be done, how, when, and by whom, and involves R.C. & D. technical and/or financial assistance.

(e) *RCD area plan.* A plan prepared by sponsoring local organizations with assistance from SCS and other agencies for the development of the RCD area which has been endorsed by the Governor or his designated agency and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(f) *Watershed works of improvement.* Structural, nonstructural, and land treatment measures included in a watershed plan which are to be installed in a watershed project.

(g) *RCD measure or project.* An activity or development indicated in the RCD area plan as being needed to achieve RCD area goals and objectives.

(h) *Cost sharing.* The WS and RCD legislative authorities provide for sharing certain costs of installing WS works of improvement or RCD measures by the Federal Government and by sponsoring local organizations. Federal cost sharing from WS and RCD funds is provided by SCS for certain WS works of improvement and RCD measures. Information on amounts, purposes, and procedures for cost sharing is available from the SCS.

(i) *Local cost.* The part of the cost of a WS work of improvement or a RCD measure or project that is to be paid by a sponsoring local organization.

(j) *Public agency or public body.* A State agency or department or instrumentality, county, municipality or other political subdivision or instrumentality of a State or agencies or districts created by or pursuant to State law for making improvement of a public nature or providing public services such as soil and water conservation districts, irrigation districts, drainage districts, flood prevention and control districts, school districts, other special purpose districts, municipal corporations, or similar governmental units.

(k) *Nonprofit corporation.* Mutual and other irrigation, water users, water supply, drainage, or waste disposal companies or associations, ditch companies, grazing, recreation and forestry associations, and similar associations and organizations generally designated as private corporations operating on a nonprofit basis. They may be organized and chartered under special law, general nonprofit corporation law, or general profit corporation law, if operated on a nonprofit basis under adequate charter, bylaw, mortgage, or supplementary agreement provisions which will assure continued operation in that manner.

(l) *Sponsoring local organization.* A local public agency or body or a local nonprofit corporation having authority under State law to plan, develop, maintain, and operate WS works of improvement or RCD measures or projects included in a WS or RCD area plan. The name of the sponsoring local organization must be included in the plan and sponsorship must be evidenced by execution of the plan.

(m) *Watershed loan.* A loan made by FmHA from watershed funds to a sponsoring local organization to develop a WS work of improvement.

(n) *RCD loan.* A loan made by FmHA from RCD funds to a local sponsoring organization to develop a RCD measure or project. RCD loans are made from RCD funds to enable sponsoring local organizations to provide a part or all of the local share of cost for the RCD measure.

(o) *Watershed advance.* A loan made from SCS watershed construction funds to develop a future water supply or for the preservation of a site for a work of improvement authorized in a watershed plan.

(p) *Future water supply.* Water storage capacity in a reservoir with related facilities for release or withdrawal of water to meet future needs for municipal or industrial use.

(q) *Preservation of sites.* Acquisition to assure their availability for planned developments. Land, easements, or rights-of-way essential to preserve sites for watershed works of improvement or RCD measures.

§ 1942.405 Eligibility.

To be eligible for a WS loan, WS advance, or an RCD loan, the sponsoring local organization must meet the following requirements as applicable. Questions on eligibility will be referred to the regional attorney, OGC for legal advice prior to development of a loan docket.

(a) Be named in the WS or RCD plan as a sponsor of the development to be financed.

(b) Be legally organized and established in the WS or RCD area with legal authority, responsibility and capability to develop and operate the facility for which assistance is requested.

(c) Have authority under and comply with Federal, State and local laws on such matters as:

(1) Organizing, installing, operating, and maintaining proposed WS work of improvement or RCD measures or projects.

(2) Borrowing money, giving security, levying taxes, making assessments or raising revenues for operation and maintenance of the facility and repayment of loans.

(3) Land use zoning.

(4) Acquiring necessary property, lands, and rights.

(5) Obtaining approval of construction plans and specifications by appropriate Federal, State, and local agencies and construction facilities.

(6) Health and sanitation standards, water pollution control, and environmental regulations.

(7) Design and installation standards.

(8) Public service commission or similar State public body rules and regulations.

(d) Be financially sound and capable of providing service essential to the rural development needs of the area.

(e) If it is a nonprofit corporation:

(1) Membership should be broadly based and representative of the area benefiting from the facility. Membership on the governing board of the corporation will be limited to those living in the area to be benefited unless for justifiable reasons the State director gives prior approval for other than local residents to serve on the board of directors.

(2) The corporation must propose a facility which will primarily serve or generate other substantial, tangible benefits for farmers and other residents of the area. In the case of a recreational development at least two-thirds of the membeship must be farmers and others residing in the area.

(3) Nonprofit corporations will not be formed to serve an area which could be served by a public agency which has adequate authority to provide the needed service unless prior approval of the national office is obtained.

§ 1942.406 Loan purposes.

(a) *WS and RCD loans.* WS and RCD loans may be used for:

(1) Water development, storage, treatment and conveyance to farms for irrigation and other farm use, including farmstead, livestock, orchard, and crop spraying.

(2) Drainage systems and facilities in farm areas to sustain agricultural production or protect farmers and rural residents from water damage.

(3) Agricultural water management practices for annual streamflow stabilization, recharging ground water reservoirs, and conserving water supplies by management and control of vegetation along waterways and in drainage basins.

(4) Soil conservation and water control facilities such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land treatment and stabilization measures needed to protect farms and rural residents from water damage, provided such facilities cannot be installed or imporved under, or will not conflict with, other public programs such as those administered by the Corps of Engineers.

(5) Special treatment measures or equipment primarily, though not exclusively, for flood prevention such as:

(i) Facilities and equipment for fire prevention and control.

(ii) Tree planting and establishment of other vegetative cover for stabilizing critical runoff and sediment-producing areas.

(iii) Structural and vegetative measures to stabilize stream channels and gullies.

(iv) Basic farm conservation practices to control runoff, erosion, and sedimentation.

(6) Installing, repairing, and improving water storage facilities, including outlets for immediate and future domestic, municipal and industrial water supply and water quality management, and conveying water to treatment facilities or distribution systems. When payment of loans for such facilities are primarily dependent upon revenues from use of water stored the loan approval official must determine the adequacy of facility for use of the water before a loan is closed.

(7) Public water based recreation and fish and wildlife developer loans will only be made to public bodies for the local share of cost for such developments for which SCS is providing technical or financial assistance from WS or RCD funds. Loans will not be made for developments larger or more elaborate than that which is included in the WS or RCD plan. Loans may include funds for:

(i) Construction of necessary water resource improvements such as storage capacity in multipurpose and single purpose reservoirs, water level control structures in reservoirs and streams, and stream channel improvements necessary for the development of the facilities. This may include practices for improvement of fish and wildlife habitat and environment and related areas and facilities for proper protection and management of the development.

(ii) Essential developments, improvements, equipment and facilities for access, public health and safety, and efficient operation management and maintenance; such as energy utilities, water supply and waste disposal systems, maintenance buildings, fences, cattle guards, roads and trails, parking, picnicking, camping, beaches, playgrounds, and related shelters and equipment.

(iii) Special areas and structures such as forest and other vegetative cover, marshes, pits, shelters and fish ladders to provide protected natural spawning, breeding, nesting, and feeding for fish and wildlife.

(8) Soil and water management for agriculture related pollutant control. Measures to reduce agriculture-related pollutants that adversely affect the community and the general public. Measures may include, but are not limited to, holding ponds, debris basins, diversions, terraces, and community distribution systems.

(9) Acquiring fee simple title to lands or perpetual easements, or rights-of-way for sites for works of improvement or project measures and related costs for removal, relocation, or replacement of existing improvements including relocation payments for displaced persons, business enterprises and facilities, and other related purposes. Funds for land acquisition will be limited to costs necessary for WS works of improvement or RCD measures. Final construction plans will indicate minimum essential lands and rights-of-ways to be acquired. In some cases, sponsoring local organizations may need to acquire lands in excess of actual needs when it is expedient for planned development. If the State director determines that the acquisition of excess land is necessary or expedient for the orderly development of a WS works of improvement, or RCD measure, he may authorize the action subject to the following conditions:

(i) The applicant must agree to sell excess land as soon as practicable and apply the proceeds, together with any income from excess land, on the debt to FmHA.

(ii) The applicant must furnish legal evidence of authority to acquire additional land and dispose of it as agreed.

(iii) Evidence must be provided to jusify acquisition of additional land.

(iv) Easements for land or water resource protection structures must be perpetual and must not include clauses that terminate the easement with the dissolution or abandonment of the applicant organization. Loan funds will not be used for an easement that deviates in any way from that provided in the standard SCS form unless modifications of it are approved by both SCS and FmHA.

(10) Acquisition of water supply or water right by purchase or by appropriation under local, State, and Federal laws. The loan may include funds for the purchase of land on which the water supply or water right is presently being used when:

(i) The water supply or water right cannot be purchased without the land, and

(ii) The value of the land is not the major portion of the cost, and

(iii) Any excess land thus acquired will be sold as soon as possible and the proceeds applied on the loan.

(11) Purchase of equipment and machinery necessary for development and operation of planned WS works of improvement or RCD measures or projects including:

(i) *Special-purpose equipment.* Purchase or rent special-purpose equipment to install or maintain any community facility in the above categories or to establish on farms soil and water conservation measures such as terraces, ponds, land leveling for irrigation or drainage, subsoiling, seeding, tree planting, and removal of brush, scattered trees, and stumps, provided:

(A) Such equipment is not otherwise available when needed.

(B) There is sufficient need and local demand to justify ownership or rental.

(C) Rates to be charged include, among other things, an allowance for depreciation, obsolescense, and replacement based upon the recommendations of the equipment manufacturer or the experience of contractors engaged in providing services for similar types of work.

(ii) *Forestry equipment and services.* Purchase or rent basic special-purpose equipment, facilities, certain land or land rights, and supplies needed for furnishing services for the establishment, improvement, protection, and harvesting of timber (not processing) suitable for lumber, pulp, poles or posts; providing that the forest program and forest practices benefiting from such services are in accordance with approved conservation practices for the development, use, and control of water resources on farms and in forests. Special-purpose equipment may include such items as tractors, bulldozers, plows, planters, trucks, loaders, fire-fighting equipment, and sprayers. Facilities may include such items as ponds and reservoirs, pipelines, buildings for storage of equipment and supplies, nurseries, access roads, fire lanes, and lookout towers. Supplies may include such things as seed, seedlings, fertilizers, fencing, and pesticides. Land or land-rights acquisition will be limited to that necessary for sites for facilities listed above which are directly related to the forestry program. Loans for these purposes may be made only when the equipment, supplies, and facilities to be provided:

(A) Are not readily available when needed.

(B) Will be justified by local need and demand.

(C) Will be available to users at rates sufficient to cover loan amortization, obsolescence, replacement, operation, and cost of supplies.

(D) Will more efficiently serve the group through cooperative effort.

(12) Refinancing debt obligations of the sponsoring local organization that were incurred before application for a WS or RCD loan when that is not the primary purpose of the loan and:

(i) The debt being refinanced was for works of improvement or measures for which loan funds could be used and,

(ii) The debt is a valid obligation of the sponsor and

(iii) Creditors will not modify payment terms on existing debts, and the organization cannot pay existing debts and a loan from FmHA over the same period of time.

(13) Long-term debts will not be refinanced unless necessary to provide a sound basis for the loan or WS advance and concurrence is obtained from the national office.

(14) If repayment is based on revenues, payment of interest installments from loan funds (but not WS advances) until the facility is generating enough revenue to make accrued interest payments. Loan funds for interest payments will not exceed the estimated amount that will accrue to the

end of the third full calendar year after loan closing without prior approval from the National Office.

(15) Relocation payment to displaced persons, business, and farm operations and for relocation assistance advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Pub. L. 91-646, 84 Stat. 1894), the regulations issued by the Secretary of Agriculture under the act (7 CFR Part 21) and the Memorandum of Understanding between SCS and FmHA.

(16) Services of engineers, architects, attorneys, auditors, construction foremen, managers, clerks, and others for organizing, planning, surveying, supervising, analyzing, developing, operating, managing, and accounting for activities related to loan processing and closing and development for which the loan is made.

(17) Buildings, fences, roads, utilities, facilities, and relocation.

(i) To construct buildings of modest design essential for the operation and maintenance of the works of improvement or measure.

(ii) To provide support facilities and utilities such as gas, electricity, water, sewer, and waste disposal.

(iii) To build or relocate roads, bridges, utilities, fences, and other improvements when necessary to acquire rights-of-way or to construct or operate the facility.

(18) Services and fees. To pay costs for services for any purposes listed under this section such as:

(i) Fees or other legal expenses for establishing a water right through appropriation, agreement, permit, or court decree.

(ii) Purchase of water stock or membership in an incorporated water users' association to acquire a water supply.

(iii) Costs of labor, technical or professional services, and fees to be incurred in obtaining the loan and in planning and completing the facilities or services to be financed with loan funds.

(iv) Services such as those listed in paragraph (a) (16) of this section.

(b) *RCD loans.* Purposes for which RCD loans may be made in addition to those included in paragraph (a) of this section are:

(1) *Solid waste management.* Lands, equipment and facilities to collect, transport, and dispose of solid waste in sanitary landfills for which SCS is providing technical assistance.

(2) *Shifts-in-land use.* Lands for uses such as grazing, forestry, wildlife, natural areas and parks, greenbelts, and other open spaces.

(3) *Purchase existing facilities.* Purchase existing facilities for shift-in-land use, soil and water development, conservation, control and use when it is determined that purchase is necessary to provide efficient service through a facility owned and operated by a public agency (or a nonprofit corporation in a rural area), or the owner is either unwilling or unable to make improvements, enlargement, or extensions needed to provide significant additional or improved service for present users or for a new group of users at reasonable rates.

(c) *SCS watershed advances.*

(1) SCS watershed advances are loans that may be made from SCS construction funds for the following purposes included in a watershed work plan agreement:

(i) To pay construction costs including cost of engineering and related services for increasing reservoir capacity (including intake and outlet structures) for a future water supply for municipal, domestic, industrial, or agricultural uses.

(ii) To preserve sites for authorized watershed works of improvement by acquiring land, easements, and rights-of-way or other property rights.

§ 1942.407 Loan and advance limitations and obligations incurred before loan closing.

(a) *WS and RCD loan limitations.*

(1) Loans will not be used for:

(i) Land treatment measures on individual farms except as provided in § 1942.406(a)(5)(iv).

(ii) Buildings and facilities to be used for lodging, dining or entertainment purposes.

(iii) Building industrial parks or constructing facilities in them, or establishing private industrial or commercial enterprises, or purchasing land to be used primarily for industrial purposes.

(iv) Paying costs allocated to structural measures for flood prevention.

(v) Facilities for the production and harvesting of fish and wildlife such as hatcheries, rearing ponds, and related facilities other than those under natural conditions.

(vi) Facilities primary for treatment and distribution of water or for sewerage, collection and treatment for domestic or industrial use or for municipal or community systems.

(vii) Electric generating, transmission, and distribution facilities, except when provided as part of the minimum basic facilities for recreation and fish and wildlife developments authorized in § 1942.406(a)(7).

(viii) Storm and sanitary sewers and solid waste disposal facilities other than authorized in § 1942.406(b)(1).

(ix) Payment for a tract of land, easements, or rights-of-way on which SCS will share the cost if the amount to be paid with loan funds exceeds the difference between the SCS share and the value on which the SCS share is based.

(x) Purchasing tracts of land primarily for later resale to private developers or individuals for agricultural or nonagricultural use.

(xi) [Reserved]

(xii) Buildings for residential, commercial, or industrial use.

(xiii) Developments on private property primarily for the benefit of the individual property owner.

(xiv) Payment of that part of the cost of facilities, improvements, and practices that could be earned by participation in agricultural conservation programs unless such cost cannot be covered by purchase orders or assignments to material suppliers or contractors. If a loan is made for such purposes for which practice or cost share payments exceed $500, FmHA will obtain an assignment on such payments to be paid on the loan.

(xv) Primarily for water and sewage treatment plants and distribution systems.

(xvi) Drainage facilities primarily for the benefit of other than rural areas.

(xvii) Any single RCD measure that requires a loan of more than $500,000.

(xviii) The total amount of principal outstanding for all WS loans made for one or more watershed works of improvement in a single watershed project, whether made to one or more sponsoring organizations, will not exceed $10,000,000.

(b) *Watershed advance limitations*—(1) A WS advance for future water supply will not be used for acquiring property rights including lands, easements, and rights-of-way; water rights; administration of contracts; storage capacity for immediate municipal use; pipelines from the reservoir to place of use; or for other uses such as irrigation, fish and wildlife, and recreation.

(2) A WS advance for increasing reservoir capacity for future water supply will not exceed 30 percent of the total installation cost of the structure.

(3) A WS advance for site preservation will not exceed that determined necessary by SCS except to purchase land in excess of actual needs in accordance with the provisions of § 1942.406(a)(7).

(4) Before a project agreement is entered into, there must be satisfactory evidence that the borrower will develop the site to be acquired or will use the future water supply and that revenue will be sufficient to meet all scheduled installments.

(c) *Obligations incurred before loan closing*—(1) WS loans, WS advances and RCD loans may be used for payment of obligations incurred before loan closing when the State director determines that:

(i) The obligations incurred are necessary for planned developments,

(ii) The obligations are incurred for authorized loan purposes, and

(iii) Contracts and construction plans meet FmHA and SCS standards, and

(iv) The applicant has legal authority to incur the obligations at the time proposed and

(v) The State director authorizes such action in a letter to the applicant.

(2) The State director's letter will specifically state that the permission is granted on the condition that FmHA is not committed to make

loan and assumes no responsibility for any obligation incurred by the applicant because of the permission granted and that the loan will be closed subject to compliance with agency regulations including closing instructions of the regional attorney office of the general counsel.

§ 1942.408 Rates and terms—WS loans and WS advances and RCD loans.

(a) *Interest rates.* The interest rate for WS loans, WS advances and RCD loans is the average rate as determined by the Secretary of the Treasury, payable by the U.S. Treasury on its marketable public obligations outstanding at the beginning of the fiscal year in which an obligating agreement is executed, which are neither due nor callable for redemption for 15 years from the date of issue.

(1) The interest rate determined at the beginning of each fiscal year, will be charged for loans or advances obligated in that fiscal year.

(2) For loans, unless otherwise required by State law, interest will accure from date of check delivery where Form FmHA 440-22, "Promissory Note (Association Organization)," is used. Where bonds are used interest will accure from the applicable dates recorded on the bonds. Where multiple loan disbursements are used interest will accrue from date of check.

(3) Interest on an advance for future water supply will begin as required by State law, when water is first used from the future water storage capacity installed with advance, or ten years from the scheduled date of the completion of the facility, whichever date is the earlier.

(4) Interest on an advance for preservation of sites will begin on the date the advance is closed.

(b) *Length of repayment period.* The repayment period on loans may not exceed the shortest of the following periods:

(1) The statutory limitation on the sponsoring local organization's borrowing authority.

(2) Fifty (50) years for WS loans and WS advances and 30 years for RCD loans from the date when the principal benefits from the WS works of improvement or RCD measure being financed first become available.

(3) The useful life of the WS works of improvement or RCD measure being financed with loan or advance funds.

(c) *Deferred or partial payments.* Deferred or partial payments may be authorized when:

(1) Payments need to be delayed until the receipt of income from taxes or other revenues is enough to meet a regular installment but not exceed:

(i) The completion date of the facility or

(ii) The date when benefits from the facility begins but

(iii) In no case for more than 5 years for other than future water supply.

(2) Payments will depend on the increased returns expected from planned improvements, or from the installation on individual farms of land development or other soil and water improvements essential for obtaining benefits from the improvement to be installed with loan funds.

(3) They will not be used to permit the accelerated payment of other debts, to make capital improvements, or to create operating reserves.

(4) Where prohibited by State Statutes; interest payments will not be deferred even though payments on principal may be deferred.

(5) Loans or advances for future water supply will be repaid within the life of the reservoir structure but in no event later than 50 years for WS and 30 years for RCD after the reservoir structure is built. Payments on the principal amount may be deferred one year after the water is first used from the storage capacity installed with the advance or for 10 years from the scheduled completion date of the structures, whichever occurs first.

(i) Interest will begin for a future water supply as required by State law, or when water is first used from the future storage capacity or 10 years from the scheduled date of completion of the facility, whichever occurs first.

(ii) If State law requires that interest be charged and repaid before water is first used or earlier than 10 years from completion date of the structure, interest payments will be scheduled to comply with State law even though payments of principal may be deferred.

(iii) The borrower should be encouraged to begin repayments as soon as practicable after the reservoir is built even though this liberal deferment policy exists.

(iv) WS advances for preservation of sites must be fully repaid before beginning construction of the works of improvement for which such sites were acquired.

(A) Unless a WS advance is to be repaid with a WS loan, installments will be scheduled at the earliest possible date following the date of closing the advance. The date and amount of each such installment will be fixed to coincide with the receipt of income from taxes or other revenues.

(B) Payments for both principal and interest on a WS advance for preservation of sites may be scheduled for payment in one installment to be paid on the date of the closing of a WS loan which includes funds for the repayment of the WS advance.

(C) Interest on a WS advance for preservation of sites will begin on the date the WS advance is closed.

(d) *Payment amortization and application.* (1) A borrower may make prepayments on WS loans, WS advances, or RCD loans in any amount at any time.

(2) Payments will be applied first to interest accrued to the date of the receipt of payment, and second to the principal balance. If the regular payments plus any prepayments exceed the cumulative amount due, the excess payments will be applied on the next installment first to interest, then principal. Loan refunds and proceeds from the sale of security property, however, will be applied on the final unpaid installment.

(3) Payments will be scheduled annually beginning 1 year following the date of loan closing or 1 year following the end of any approved deferment period, unless another annual due date is required by State statute or upon prior written authorization from the national office. In those cases where loans are being made under statutes requiring a repayment date other than this, the State director will send a copy of the regional attorney's opinion that such is required, to the finance office.

(4) When a single obligation instrument is used, amortized installments will be required. When this cannot be done because of State law, serial bonds or a single bond having installments of principal plus interest, stated separately, will be used. In cases where the payment of interest has been deferred all collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(5) In cases where the indebtedness will be represented by serial bonds or a single bond having installments of principal plus interest, stated separately, annual payments of principal and interest will be scheduled to permit them to be paid in amounts approximately equal to the amounts that would be required for annual amortized installments.

(6) If the borrower will be retiring other debts represented by bonds or notes, the payment on such bonds may be considered in developing the payment schedule for the FmHA loan. In some cases, it may be desirable to reduce the amount of payments to FmHA in the early years of the loan in order to preclude the necessity for refinancing the outstanding debt. When such payment schedules are proposed, national office authorization will be obtained prior to loan approval.

(7) *Payment date.* Insofar as loan payments are consistent with income availability, applicable State statutes and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later then the time of loan closing. When monthly payments are required, such payments will be scheduled beginning 1 full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls

for annual or semiannual payments, they will be scheduled beginning 6 or 12 full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each 6th or 12th full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month.

§ 1942.409 Security, feasibility, evidence of debt, title, insurance and other requirements.

(a) *Security*—WS loans, WS advances and RCD loans will be secured in accordance with applicable provision of 1942.17(g).

(b) *Feasibility.* All projects financed under the provisions of this subpart must be based on taxes, assessments, revenues, fees, or other satisfactory sources in an amount that will provide for facility operation and maintenance, a reasonable reserve, and payment of the debt. The State director may obtain needed assistance in determining economic feasibility from officials of SCS and other appropriate USDA agencies. See § 1942.17(h) for applicable economic feasibility requirements and feasibility reports.

(c) *Notes, bonds, and bond transcript documents.* See § 1942.19 for applicable requirements and provisions.

(d) *Insurance.* See § 1942.17(j)(3) for requirements.

(e) *National flood insurance*—The requirements of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 will be complied with in accordance with the applicable provisions of FmHA Instruction 1901-L. Also see § 1942.18(d)(1)(i).

(f) *Borrower contracts and bonds.* See § 1942.18 (e), (i) and (n)(3) of Subpart A of Part 1942 for applicable provisions.

(g) *Title requirements.* (1) Title evidence for land, easements, and rights-of-way to be acquired with proceeds of loans or advances will be furnished by the sponsoring local organization in accordance with SCS policies and procedures.

(2) FmHA will specify and approve the form and content of instruments for conveying title to or interest in real estate on which a lien will be taken to secure a WS loan, WS advance, or RCD loan. These should be consistent with the applicable provisions of § 1942.17(g). The State director will make his decision after consultation with the regional attorney and the State conservationist. He will notify SCS in writing of his decision. Thereafter, title clearance will be completed under SCS regulations except that a marketable title must be obtained on any tract of land, a part of which will be sold as excess land in accordance with § 1942.406(a)(9). In addition to the title evidence required by SCS, applicants will furnish an opinion of legal counsel on all land and interest in land acquired with loan or advance funds.

(h) *Purchasing lands, rights and facilities.* The amounts paid for lands, rights, and facilities with loan funds will be not more than that determined to be reasonable and fair by the loan approval official based upon an appraisal of the current market value made by an FmHA employee or an independent appraiser authorized by the FmHA loan approval official.

(i) *Water rights.* Applicants will be required to comply with applicable State and local laws and regulations governing appropriating, diverting, storing and using water, changing the place and manner of use of water, and in disposing of water. All of the rights of any landowner, appropriator, or user of water from any source will be fully honored in all respects as they may be affected by facilities installed with WS loans and advances and RCD loans. If, under the provisions of State law, notice of the proposed diversion or storage of water by the applicant may be filed, the applicant will be required to file such a notice. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979; 50 FR 7327, Feb. 22, 1985]

§ 1942.410 [Reserved]

§ 1942.411 Other considerations.

(a) *Technical assistance.* When pipelines from reservoirs to treatment plants are included in watershed work plans, SCS will not furnish engineering services for their design or installation. When such pipelines are to be financed by WS or RCD loans, FmHA will supervise the activities of the private engineers retained for the purpose. Such FmHA supervision will include, among other things, approval of private engineer's contracts, approval of plans and specifications, authorization of contract awards, spot checks of engineering inspection, and final inspection and acceptance.

(b) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Necessary professional services may include such as that of an engineer, architect, attorney, bond counsel, accountant, auditor, and financial advisor or fiscal agent. Form FmHA 442-19, "Agreement for Engineering Services," may be used when appropriate. Part 1942, Subpart A, Guide 14 (available in any FmHA office) and may be used as a guide to prepare the agreement for legal services.

(c) *Other services.* Contracts for other services such as management, operation, and maintenance will be developed by the applicant and presented to the FmHA official developing the docket for review and approval.

(d) *Fees for services.* Fees provided for in contracts, agreements, or services will not be more than those ordinarily charged by the profession for similar work when FmHA financing is not involved.

(e) *State pollution control or Environmental Protection Agency standards.* Facilities will be designed, installed, and operated to prevent pollution of water in excess of established standards. Effluent disposal will conform with appropriate State and Federal water pollution control standards.

(f) *Water pollution.* When repayment of a WS loan, WS advance, or RCD loan will be dependent upon income from the use or sale of water, FmHA approval will be contingent upon a determination that the proposed use of water will not be impaired by pollution. For example, full use of stored water for recreation or municipal supply might not be permitted by a State health department because the water is being polluted from an upstream or other source.

(g) *Environmental requirements.* Actions will be taken to comply with the National Environmental Policy Act in accordance with Subpart G of Part 1940 of this chapter. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by SCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the SCS environmental review fails to meet the requirements of Subpart G of Part 1940 of this chapter. The FmHA State Director should document the action taken by SCS in compliance with the requirements of the National Environmental Policy Act and fomally adopt the impact statement or assessment, if satisfactory. If a determination is made that a further analysis of the environmental impact is needed, the FmHA State Director will make necessary arrangements with the State SCS Conservationist for such action to be taken before a loan is made.

(h) *National Historic Preservation Act.* All projects will comply with the provisions of the National Historic Preservation Act of 1966 in accordance with FmHA instruction 1901-F.

(i) *Civil Rights Act of 1964.* Recipients of WS loans, WS advances, or RCD loans are subject to title VI of the Civil Rights Act of 1964 which prohibits discrimination because of race, color, or national origin. Borrowers must agree not to discriminate in their operations by signing form FmHA 400-4, "Nondiscrimination Agreement," before loan closing. This requirement should be discussed with the applicant as early in the negotiations as possible. Necessary actions will be taken in accordance with FmHA instruction 1901-E.

(j) *Appraisals.* When required by the State director, appraisals will be made by an FmHA official designated by him. Form FmHA 442-10, "Appraisal Report—Water and Waste Disposal Systems," with appropriate supplements, may be modified as needed for use with the type of facilities being appraised.

(k) *Architectural Barriers Act of 1968.* All facilities financed with FmHA loans and grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this act in accordance with this act.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979; 49 FR 3760, Jan. 30, 1984]

§ 1942.412 Preapplication and application processing.

(a) *WS and RCD Loans*—(1) *Preapplications.* (i) The County Supervisor or other person designated by the State Director may assist the applicant in completing SF 424.1, "Application for Federal Assistance (For Nonconstruction)," and will forward one copy of SF 424.1 to the State Director.

(ii) The State director will review form SF 424.1 along with other necessary information and will coordinate selection of preapplications to be processed with SCS. He will consult with the SCS State conservationist concerning the status of the WS plan or RCD measure plan, the estimated time schedule for construction and cost of the proposed works to be installed with the loan, cost sharing funds to be made available to the applicant, and other pertinent information.

(iii) Form AD-622, "Notice of Preapplication Review Action," will be prepared and signed by the State director within forty-five (45) days from receipt of the preapplication in FmHA stating the results of the review action. An original and one copy of form AD-622 will be sent to the county supervisor who will deliver the original to the applicant.

(2) *Applications*—(i) The application includes applicable forms and information indicated in Part 1942, Subpart A, Guide 15 (available in any FmHA office). When the State director determines that an application will be further processed and form AD-622 is delivered, he will designate the district director, a community program specialist (field), or a member of the community program staff to assist the county supervisor and the applicant with assembling and processing the application.

(ii) The county supervisor should arrange needed conferences with the applicant and its legal and engineering consultants, and when necessary, arrange for review of other FmHA officials, and provide guides, forms, instructions, and other assistance with assembling and processing the application. A processing checklist and time schedule will be established by using form FmHA 1942-40, "Processing Check List (Public Bodies)," or form FmHA 1942-39, "Processing Check List (Other than Public Bodies)." The county supervisor will send a letter and a copy of the processing checklist to the applicant to confirm instructions and decisions conference. The original and a copy of the processing checklist will be kept in the county office, and will be posted current as application processing actions are taken. The copy will be circulated from tne county office to the district director to the State office for use in updating copies of the forms retained, after which it will be returned from the State office to the county office.

(3) *Dockets.* WS loan, WS advance, and RCD loan dockets will be developed and assembled in accordance with applicable provisions of Part 1942, Subpart A, Guide 16 (available in any FmHA office).

(b) *Watershed advances.* Applications for WS advances will be developed and processed with SCS assistance as necessary.

(1) The State director will arrange with the SCS State conservationist to be advised when a local sponsoring or-

ganization applies to SCS for a WS advance.

(2) The FmHA State director will request the SCS State conservationist to provide information justifying the WS advance along with a written recommendation that it be made. This will include:

(i) Economic feasibility of the proposed WS advance.

(ii) Evidence of the legal authority of the sponsoring local organization to incur the obligation and make required payments.

(iii) Any limitations on the issuance of additional bonds or notes which may be imposed by the provisions of bond ordinances or on resolutions which authorize the issuance of any outstanding obligation of the sponsoring local organization.

(iv) The amount of WS advance funds to be provided, purpose for which funds will be used, and date funds will be needed.

(3) When the above information has been made available to the FmHA State director, he will send written recommendations concerning further action on the WS advance request to the SCS State conservationist including actions to be taken in the preparation of the WS advance docket as required by Part 1942, Subpart A, Guide 16 (available in any FmHA office).

(c) *Combination WS Loans and WS Advances.* If an applicant requests both a WS loan and WS advance, the application for the WS loan should indicate the amount of the WS advance needed and whether a request for it has been made to SCS. The FmHA State director and the SCS State conservationist will coordinate applicable processing actions of such applications. When the FmHA State director determines that favorable consideration will be given to an application for a loan or advance, he will provide instructions to the county supervisor for completing and processing the appropriate docket. Any questions concerning eligibility or other legal matters should be cleared with the regional attorney.

(d) *Review of Decision.* When it is determined that the preapplication or application cannot be given favorable consideration, the State director will return it to the county supervisor along with written reasons. When the county supervisor receives this information, he will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that the FmHA Administrator may be requested to review the decision. This action will be taken in accordance with Part 1942, Subpart A, § 1942.2 (c).

(1) Upon receipt of the State office copy of a review request from the applicant, the State director will furnish a report on the matter to the Administrator.

(2) The Administrator will notify the applicant and the State director in writing of his decision and the reasons therefore.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979; 48 FR 29120, June 24, 1983; 54 FR 47197, Nov. 13, 1989; 55 FR 13503, Apr. 11, 1990]

EDITORIAL NOTE: Nomenclature changes to § 1942.412 appear at 55 FR 13503, Apr. 11, 1990

§ 1942.413 [Reserved]

§ 1942.414 Planning, options, and appraisals.

(a) WS and RCD area plans are developed by sponsoring local agencies and organizations with technical assistance from SCS and other Federal and State agencies. These plans include WS works of improvement and RCD measures to be developed or constructed for which SCS construction funds may be made available on a cost share basis along with funds provided by the sponsoring local organization, a portion or all of which may be obtained by a WS loan and/or WS advance, or a RCD loan.

(b) Current information on the availability of cost share funds and purposes for which they may be used is provided by SCS. The amount of SCS cost share funds and the amount of funds to be provided by the sponsoring local organizations will be indicated in each plan. The estimated amount of WS loan, WS advance, or RCD loan anticipated by the sponsoring local organization should also be included.

(c) Plans for the development or construction of individual WS works of improvement and RCD measures will normally be developed with SCS technical assistance. In every case they will be approved by both the SCS State conservationist and the FmHA State director or their designated agent when a WS loan, WS advance, or RCD loan is made.

(d) Options and appraisals related to the purchase of real estate for which a WS loan, WS advance, or RCD loan is made must be developed in accordance with SCS and FmHA requirements and approved by FmHA. The determination of present market value will be made in accordance with Part 1942, Subpart A, § 1942.3.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1942.415 Planning and performing development.

(a) Planning and performing development will be handled in accordance with §§ 1942.9 and 1942.18 and regulations of SCS for developments with SCS financial assistance.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1942.416 County committee review.

(a) Comments and recommendations in narrative form will be obtained prior to approval of a WS loan, WS advance, or RCD loan from:

(1) The county committee for the county in which the WS works of improvements or RCD measure is or will be located and also in which the applicant is located if in different counties, and

(2) The county committee in other counties in the WS or RCD area if the State director determines that such is desirable.

(b) The comments and recommendations should indicate the community need for and interest in the proposed WS works of improvement or RCD measure, any local issues, or other information which the committee feels should be considered by the approval official.

(c) The written statement of the county committee will be signed by at least two members of each committee involved and will be included in the loan docket.

§ 1942.417 Docket preparation and processing.

(a) *Loan dockets.* Dockets for WS loans, WS advances, and RCD loans will be prepared in accordance with the applicable provisions of FmHA regulations including Part 1942, Subpart A, §§ 1942.3, and 1942.5, and Guides 15 and 16 (available in any FmHA office), and the following:

(1) *Time for preparation of docket.* Docket preparation may begin as soon as a preliminary draft of the watershed plan or RCD area plan, together with an estimate of costs and benefits, have been prepared with the assistance of SCS and approved by the sponsoring local organization applicant. However, the applicant must understand that approval of the WS loan, WS advance, or RCD loan will not be determined until the work plan has been authorized for assistance by SCS. To the extent practicable, docket preparation may be completed by that time to facilitate the availability of funds when needed.

(2) *Instructions for preparation of docket.* When the State director has determined that plans and other requirements are completed to the extent that preparation of the loan docket may begin, he will send the county supervisor a memorandum giving complete instructions for docket preparation, with a list of documents to be included in the docket.

(3) *Objectives of the docket.* The docket should include information for use in determining that:

(i) The sponsoring local organization:

(A) Has legal authority to construct and operate the proposed facility, borrow money, give security, incur debt, and generate revenue needed for operation, maintenance, reserves, debt payment, and other cash requirements.

(B) Is a sponsor or cosponsor of the WS plan or RCD work plan and is otherwise eligible for assistance.

(ii) Funds will be used for authorized purposes.

(iii) The source of income to be pledged for debt payment and the security proposed is adequate.

(iv) Actions required for loan closing are administratively satisfactory, legally sufficient and properly documented in accordance with Agency regulations.

(4) *Assembly of the docket.* The docket will be assembled in accordance with paragraph (2) of this section, applicable provisions of Part 1942, Subpart A, Guides 15 and 16 (available in any FmHA office) and will include the following:

(i) A copy of the WS works of improvement agreement or RCD measure agreement.

(ii) A copy of the operation and maintenance agreement between SCS and the WS or RCD sponsoring local organization for the WS works of improvement or the RCD measure.

(iii) A statement from the SCS State conservationist concurring in the feasibility of the WS work of improvement or RCD measure and that SCS is providing financial and/or technical assistance in accordance with applicable WS or RCD authorities.

(5) *Narrative by county supervisor.* This should be included in or attached to the project summary. It should relate project costs to benefits of the WS or RCD loan or WS advance. Minimum and average individual charges, tax levies or assessments should be given where applicable. Where taxes or assessments on land will be levied, acres should be indicated and average cost per acre should be given. Analyses of income from recreational facilities should be based on the best information available from local, State, and Federal agencies concerned with such recreation facilities. Determination of water rates, schedules, and estimated consumption of water should be made by the same methods as for loans for domestic water and irrigation.

(6) *Estimates of right-of-way Costs.* The docket should include, as part of the project summary, current estimated costs of easements, rights-of-way, and other land rights which must be acquired. The amount estimated for such purposes in the WS or RCD plan should reflect current conditions.

(b) *Loan processing by State Office*—(1) *Review of the docket.* The county supervisor and the district director will check the docket for accuracy and completeness and forward it to the State office with their recommendations. The State director will review the docket to determine that:

(i) All documents are accurate and complete.

(ii) The proposed loan complies with WS and RCD program policies and procedures of both FmHA and SCS.

(iii) Security is adequate and the repayment plan is sound.

(iv) Funds requested are for authorized purposes.

(v) Actions are in compliance with requirements of applicable Federal and State laws.

(2) *Letter of conditions.* When the State director determines that the docket is complete and the proposed activity is feasible, he will prepare a proposed letter of conditions including the requirements § 1942.5(a)(1) under which the application may be further processed. The letter will be delivered to and discussed with the applicant upon acceptance of the conditions the applicant will indicate instructions to meet the conditions by a letter of interest and the application will be further processed.

(3) *Legal Review.* The complete docket and proposed letter of conditions will be forwarded to the regional attorney, OGC for review and preparation of closing instructions. If it is not possible to issue closing instructions at that time, the regional attorney, will issue a preliminary legal opinion commenting upon the applicants legal existence, authority to incur debt and give security for the WS loan, WS advance, or RCD loan requested and actions to be taken before closing instructions may be issued.

(4) *Authorization for Approval.* When the FmHA State director receives closing instructions or a preliminary legal opinion for a WS loan, WS advance, or RCD loan that is not within his approval authority he will send this information along with the docket, the proposed letter of conditions, and a memorandum recommending approval to the national office. A copy of his memorandum will be sent

to the county supervisor and to the district director. If the proposed action is within the State director's approval authority he need not submit the material listed above to the national office unless he wants review and comments before approval.

(c) *WS Advance Processing*—(1) When the FmHA State director has concurred with the SCS State conservationist in the inclusion of a WS advance in a watershed plan, preparation of the advance docket can be initiated and will be processed in the same manner as for a WS loan. Where both a WS loan and WS advance are planned only one docket will be prepared to include both the WS loan and WS advance.

(2) If the advance appears to be sound and proper, the FmHA State director will send a proposed memorandum of concurrence to the SCS State conservationist. The memorandum will state that FmHA concurs in the execution of a work of improvement agreement for which SCS will obligate advance funds and that FmHA will accept the proposed obligations of the applicant to repay the advance subject to conditions specified in or attached to the memorandum. These conditions will include all appropriate requirements in accordance with § 1942.417(b)(2) of this instruction and will specify compliance with closing instructions issued by the regional attorney. It will also indicate that preparation of the WS advance docket will be in accordance with § 1942.417(a) of this instruction.

(3) The FmHA State Director and the SCS State conservationist will sign the memorandum of concurrence to SCS when:

(i) It has been determined that funds for the advance will be obligated by SCS, and

(ii) The WS advance docket, has been approved, and

(iii) Closing instructions have been issued by the regional attorney, and

(iv) The FmHA State Director and SCS State conservationist have determined that the applicant can comply with all requirements of the letter of conditions and closing instructions.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1942.418 Feasibility.

(a) Before WS loan, WS advance, or RCD loan is approved, a determination of feasibility will be made by the FmHA State Director based upon a review of plans developed in cooperation with SCS personnel. The feasibility determination must have the concurrence of the SCS State conservationist before a WS loan, WS advance, or RCD loan is approved.

(b) A written assessment of the project's feasibility will be made by the county supervisor, architect/engineer, district director, and program chief in their recommendations or comments on the project summery. These should reflect concurrence of the respective SCS personnel in counterpart positions with whom they cooperate in administering these programs.

§ 1942.419 Approval, closing, and cancellation.

(a) Approval and closing actions will be taken in accordance with the applicable provisions of Part 1901, Subpart A, and §§ 1942.5, 1942.6, 1942.7, 1942.8, and 1942.17 and the following:

(1) The WS or RCD plan has been approved for operations by SCS and the applicant is an official sponsoring or cosponsoring local organization for the plan as evidenced by being included in the list of sponsoring or cosponsoring local organizations in the plan.

(2) Closing instructions or a preliminary legal opinion has been prepared by the regional attorney.

(3) The governing body of the applicant's sponsoring local organization has formally passed and approved the loan resolution.

(4) The FmHA State director and SCS State conservationist have determined that all planned actions can be carried out as proposed in the project plan and the docket.

(5) The SCS State conservationist and FmHA State director have mutually agreed on the priority to be given the WS loan or WS advance, or RCD loan. In making this determination, consideration will be given to the relative priority of the WS works of improvement or RCD measures to all other such work in the State and the

anticipated availability of Federal and local funds to assure continuity of action and work until the project is completed. When funds are to be provided by SCS for a WS or RCD loan or a WS advance such funds must be obligated by SCS before closing.

(6) Public bodies will be required to use bond counsel in accordance with § 1942.19.

(b) When favorable action is not taken on a WS loan, WS advance, or RCD loan, the FmHA State director will notify the SCS State conservationist and the applicant in writing and, if possible, arrange for a meeting of FmHA and SCS representatives with the applicant to explain the action. WS loans, WS advances, or RCD loans may be canceled before closing in accordance with § 1942.12.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1942.420 Disbursement of WS and RCD loan funds and WS advance funds.

(a) WS and RCD loan funds will be disbursed by the county supervisor in accordance with the applicable provisions of § 1942.17(p) and Exhibit A, paragraph (5). Funds will be made available to the borrower as needed for payment of development or other costs for which the loan is made. The county supervisor must determine that the payment is for an authorized purpose and is for benefits accrued to the borrower. This will require evidence from SCS in accordance with the applicable provisions of Exhibit A, "Memorandum of Understanding Between FmHA and SCS."

(b) WS advance funds may be disbursed in the same manner as WS loan funds if such funds are transferred to FmHA by SCS for disbursement or they may be disbursed by SCS.

(1) When WS advance funds are disbursed by SCS, payments from advance of funds will be reported to the FmHA State director each month to be reported to the finance office and charged to the borrower's account. This action will be taken in accordance with the applicable provisions of Exhibit A or Exhibit B and agreement between the SCS State conservationist and FmHA State director as follows:

(i) When a future water supply is being developed with SCS, WS advance funds, the SCS State conservationist will send the FmHA State director a monthly report of funds disbursed. This will include three (3) copies of Form SCS-AS-49a and 49b, "Contract Payment Estimate and Construction Progess Report," along with a transmittal memorandum showing the sequential number (first, second, third, etc.) of the payment, the amount and date of payment, the check number by which the payment was made and the cumulative amount of advance funds disbursed to date. When the works of improvement, for which WS advance funds are used is completed the final report will, in addition to the above, show the date that construction was completed and the total amount of WS advance funds used.

(ii) WS advances for construction costs will be set out each month on form SCS 49a. The FmHA State director should make arrangements with the SCS State conservationist to be supplied each month with a copy of form SCS 49a when advance funds are included together with an official statement from the SCS State administrative officer giving the date of the check and the exact amount of each advance of funds made under the advance provisions of the project agreement or of any engineering services agreement or other supplementary agreement which further implements the proposal for the advance in the project agreement. The original will be sent immediately to the finance office and a copy provided for the FmHA county office file.

(iii) When WS advance funds are used to acquire property for site preservation the same reporting procedure as for a future water supply will be used except that form SCS-AS-49a and 49b if used, should be adopted to indicate fund use. As payments are made on land on which a mortgage or other security instrument is required, such instruments will be executed in accordance with instructions from the regional attorney, OGC.

(iv) The FmHA State director maintain send the bond or note evidencing WS advance indebtedness of the borrower to the along with reports of payments from advance funds disbursed by SCS. A copy of the bond or note and copy of each report of payment will be sent to the FmHA county office.

(c) *Actions subsequent to closing of loans or advances.* Actions will be taken in accordance with § 1942.8.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1942.421 Borrower accounting methods, management, reporting, and audits.

These activities will be handled in accordance with the provisions of § 1942.17(q).

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

§ 1942.422 Subsequent loans.

Subsequent loans will be processed in accordance with this instruction.

§ 1942.423 Servicing.

Servicing will be handled in accordance with the provisions of Subpart E of Part 1951 and Subpart A of Part 1955.

[43 FR 28442, June 30, 1978, as amended at 47 FR 52119, Nov. 19, 1982]

§ 1942.424 State supplements.

(a) State supplements will be issued as needed in accordance with applicable provisions of FmHA instructions including Part 1942, Subpart A, § 1942.16.

[43 FR 28442, June 30, 1978, as amended at 44 FR 6353, Feb. 1, 1979]

EXHIBITS TO SUBPART I

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN THE SOIL CONSERVATION SERVICE AND THE FARMERS HOME ADMINISTRATION RELATING TO THE MAKING OF WS LOANS AND WS ADVANCES UNDER THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT

(1) *Purpose:* This memorandum is to coordinate general agency responsibilities and functions of the Farmers Home Administration (FmHA) and the Soil Conservation Service (SCS) in connection with loans and advances made to sponsoring local organizations under the provisions of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended.

(2) *General agency responsibilities:* The general assignments to the SCS and the FmHA for the administration of the Watershed Protection and Flood Prevention Act are contained in the Secretary's policy statement dated October 19, 1962. Each agency will establish policy and procedures and take such other action as required to carry out its responsibility.

(i) The FmHA is responsible for making and servicing WS loans or advancements under section 8 and obligations for repayment of WS advances made by the SCS under section 4 of the act.

(ii) The SCS is responsible for administration of all authority under the act, except making and servicing WS loans made under section 8, and for servicing obligations for repayment of WS advances made by the SCS under section 4 of the act.

(iii) The SCS and the FmHA will cooperate in developing and carrying out their respective policies, procedures, and requirements, as they relate to WS loans and WS advances made under the act.

(3) *Receipt and processing of applications for loans and advances:*

(i) A works of improvement must be included in an approved watershed plan before a loan or advance for it is made under the act. During the development of a watershed plan, the State conservationist of SCS will afford the State director of FmHA an opportunity to gain an understanding of watershed problems and needs, and the proposed plans for works of improvement. When a sponsoring local organization indicates a desire for a WS loan or WS advance the SCS State conservationist will consult with the FmHA State director on matters such as organizational arrangements, specific local or State requirements and other problems related to the plans for financing, installing, operating, and maintaining the planned works of improvement being considered.

(ii) The SCS State conservationist will furnish the FmHA State director a copy of each watershed plan. The Administrator of SCS will furnish the Administrator of FmHA a copy of each approved WS plan.

(iii) A watershed plan and the related executed watershed plan agreement will not obligate the FmHA to make a WS loan or obligate the SCS to make a WS advance to sponsoring local organizations.

(4) *Coordination of assistance for design, construction, and maintenance.* The following principles are to be used as a guide for the design, construction, operation, and maintenance of works of improvement when a WS loan or WS advance is involved:

(i) The SCS will furnish or assume the cost of engineering services required to plan and install the portion of the works of improvement allocated to flood prevention, agricultural phases of the conservation, development, utilization, and disposal of water, fish and wildlife, and recreational development, and not more than 50 percent of the costs of engineering services for minimum basic facilities. Sponsoring local organizations are expected to furnish and assume the cost of other engineering services required. The SCS will give such engineering advice and guidance to the sponsoring local organization as required to insure that plans, specifications and cost estimates furnished by them meet the design and construction standards and criteria established for the project and that the works are properly coordinated with any other works to be installed under the watershed plan. The SCS State conservationist will consult with and keep the FmHA State director informed during the development of construction plans and the construction of works of improvement. This will include an engineering review and a statement by the SCS of the adequacy and appropriateness of cost estimates, designs, plans, and specifications prepared by private engineers.

(ii) Engineering plans, including specifications, drawings and cost estimates for works of improvement involving WS loans or advances will be approved by the SCS State conservationist and the FmHA State director.

(iii) The SCS State conservationist will consult with the FmHA State director as to terms and conditions to be included in invitations for bids and contracts for construction or purchase of supplies and materials in connection with works of improvement to be installed with loans or advances. The SCS will provide technical assistance and advice needed by the sponsoring local organizations for the preparation of these documents and in analyzing bids and selecting the lowest responsible bidder. The contracts shall be acceptable to the FmHA State director and the SCS State conservationist before execution by the sponsoring local organization receiving a loan or advance.

(iv) The sponsoring local organization will not be permitted to accept a bid which would require additional loan funds or make changes in plans or specifications in order to obtain a bid within the estimated cost without the concurrence of the FmHA State director. Should the sponsoring local organization desire to reject bids or to not call for bids and undertake construction of works of improvement by force account, the concurrence of the FmHA State director shall be obtained.

(v) The SCS will provide technical assistance including periodic inspections during construction as necessary to protect the Government's interest and to assure that the works of improvement are being constructed in accordance with approved drawings and specifications. The SCS may approve minor changes during construction in the contract terms and conditions and the drawings and specifications which do not appreciably affect the design, cost or function of a structure without concurrence of the FmHA. Major changes or changes which affect the over-all cost of the works of improvement will require the prior concurrence of the FmHA State director.

(vi) The SCS and FmHA will make annual joint inspections, for a period of 3 years after completion thereof or more frequently if necessary, to see that works of improvement are being operated and maintained according to agreements. The sponsoring local organization will be required to make annual inspections throughout the life of the structure and report their findings to the SCS and FmHA offices. When SCS or FmHA determines that there are serious deficiencies in operation and maintenance, the FmHA State director will collaborate with the SCS State conservationist in arranging with the local sponsoring organization for the correction of such deficiencies. The FmHA or SCS may make other inspections as necessary to service the loan or advance account of the borrowing sponsoring local organization.

(vii) Responsibility rests with the local sponsoring organization to acquire any land, easements, or rights-of-ways that will be needed for works of improvement. If a lien is to be taken on works of improvement and the land, easements, or rights-of-way, the FmHA will, after consultation with the SCS, approve the easements, deeds, and permits before they are executed. The FmHA will provide instructions to the local sponsoring organization pertaining to acknowledgment, title searchers and examinations, obtaining consent of holders of liens outstanding against the land, and recording easements and deeds. The SCS will check land description in all land rights instruments to the extent necessary to determine that the areas required for construction, operation and maintenance of works of improvement are included, except that the SCS will make no property line surveys.

(viii) When loan payments will depend upon a right to use a specific quantity of water, the local sponsoring organization will furnish to FmHA satisfactory evidence of such rights, and any required additional information concerning the water supply. This evidence will include such documents and materials as affidavits, permits, title certificates, court decrees, stream gage records, rainfall records, well logs, records of pumping tests and water analysis. The SCS will examine information that is furnished together with other available information and give FmHA a written opinion of the adequacy of supply, including quality, to meet the requirements of the plan.

(5) *Disbursement of funds.* Proceeds of WS loans will be deposited in, and withdrawn from, bank accounts in the manner required by FmHA regulations. Checks on these bank accounts for payments to contractors and supplies of materials will be based upon Form SCS 49a, "Contract Payment Estimate and Construction Progress Report." Form SCS 49a, prepared by the local sponsoring organization for this purpose, will be approved by the SCS. In giving his approval to Form SCS 49a, the SCS representative shall be certain that the items covered are for the purposes and in the amounts authorized in the project agreement.

(i) Advances for future water supply shall be made as provided in the project agreement. The maximum amount of such advance shall be shown in the project agreement.

(ii) Advances for site preservation will be handled in accordance with procedures mutually agreeable to the SCS and the FmHA, which will be developed on a case-by-case basis.

(6) *Starting construction:* The local sponsoring organization will not be authorized to start construction on works of improvement to be financed in whole or in part, with a WS loan or a WS advance until:

(i) The SCS has entered into a project agreement for construction of works of improvement.

(ii) The State conservationist has notified the State director that the local organization has complied with all SCS requirements for receiving Pub. L. 566 construction assistance and the State conservationist has furnished the State director with a schedule indicating the approximate times that construction work will begin on works of improvement to be installed with such funds.

(iii) The State director has notified the State conservationist and the borrower that the loan or advances has been properly closed.

(iv) Any contract entered into by the local organization for materials, labor, or the construction of works of improvement to be financed with loan funds has been found acceptable by the FmHA.

(v) The State director has notified the State conservationist that any advance for the preservation of sites has been repaid.

(vi) All engineering drawings and specifications for works of improvement to be financed in part by WS loans or advances have been approved by the FmHA and the SCS.

(7) *FmHA contracts with local organizations:* Ordinarily, a WS loan or advance will be made to the local organization having primary interest in, and direct responsibility for, the operation and maintenance or works of improvement to be installed with loan or advance funds rather than to an organization that would have to contract with another organization for the operation and maintenance of works of improvement and the collection of revenues for repaying the loan or advance. When it is proposed to make a WS loan to an organization that would have to contract with another organization, the organization and the contractural arrangements will be mutually acceptable to the FmHA and the SCS. This determination will be made before the approval of the project agreement for construction of the works of improvement.

(8) *Informational activities:* The SCS will be responsible for the preparation, release, or other handling of the overall informational and educational material regarding the watershed protection program, including bulletins, press releases and other public announcements. The SCS will obtain the recommendations of the FmHA prior to releasing pamphlets and similar informational material which makes reference to loans. The FmHA may prepare and release informational material on the handling of loan applications. Such material will be reviewed with the SCS if it alludes to overall costs or benefits or to technical aspects for which SCS has responsibility. When desirable or necessary in particular watershed areas for SCS to arrange for community meetings to discuss and explain the program to interested local people, the FmHA will be invited to participate in such meetings if a loan or advance may be needed by a local organization to carry out planned works of improvement.

Dated: May 26, 1978.

Victor H. Barry, Jr.,
Acting Administrator,
Soil Conservation Service.

Dated: May 31, 1978.

Gordon Cavanaugh,
Administrator,
Farmers Home Administration.

EXHIBIT B—MEMORANDUM OF UNDERSTANDING BETWEEN THE SOIL CONSERVATION SERVICE AND THE FARMERS HOME ADMINISTRATION RELATING TO LOANS MADE WITH RCD UNDER THE PROVISIONS OF SECTION 102 OF THE FOOD AND AGRICULTURE ACT OF 1962

(1) *Purpose:* The purpose of this memorandum of understanding is to outline the responsibilities and functions of the Soil Conservation Service (SCS) and the Farmers Home Administration (FmHA) in regard

to loans made by FmHA to local sponsors for the installation of RC&D measures within authorized resource conservation and development RC&D areas.

(2) *Agency responsibilities:* Secretary of Agriculture memorandum No. 1515 designates the Soil Conservation Service as the Departmental agency responsible for administration of the activities under section 102, Pub. L. 87-703, relating to resource conservation and development program. The Secretary also directed the Farmers Home Administration to assist such projects within its departmentally assigned functions which includes making and servicing RCD loans.

FmHA will establish policies and procedures for making and servicing RCD loans and will cooperate with RCD sponsors, SCS, and other Federal and State agencies in carrying out their responsibilities in support of the RCD program.

(3) *Assisting local sponsors:*

(i) When it is known that an eligible sponsoring local organization desires information about an RCD loan, the RC&D Coordinator of SCS will notify the FmHA County supervisor. They will consult with the sponsoring local organization on organizational arrangements, plans for financing, and operation and maintenance of the RCD measure for which a loan is needed.

(ii) When the RCD measure Plan has been approved by the SCS State conservationist, the FmHA representative will assist the interested sponsoring local organization with the preparation of the application for an RCD loan.

(iii) The application will be reviewed with the RCD area sponsors to see if the application and the RCD measure for which it is requested meet the RCD area plan objectives.

(iv) An approved RCD area plan and the related approved RCD measure plan will not obligate the FmHA to make an RCD loan.

(v) The SCS will furnish technical assistance to RCD sponsoring local organizations receiving a loan in accordance with SCS policies and procedures. The SCS and FmHA representatives will work together during the development of plans for RCD measures including estimates of funds needed and sources of funds for the establishment of RCD measures to assure that RCD loan funds may be used in accordance with FmHA policies to serve the needs of the RCD sponsoring local organization and also in a manner to protect the Government's interest.

(4) *Requirements to be met when financial assistance is provided by SCS and an RCD loan is made by FmHA:*

(i) The SCS will confer with FmHA as to terms and conditions to be included in invitations to bid and contracts for construction or purchase of supplies and materials issued in connection with RCD measures to be installed with RCD loan funds. The contracts must be acceptable to FmHA before execution by the sponsoring local organization.

(ii) The SCS may approve minor changes during construction which do not appreciably affect design, cost, or function of a structure. However major changes must have the concurrence of FmHA.

(iii) The SCS and FmHA will agree to make joint periodic inspections annually, or more frequently if necessary, to see that works of improvement are being operated and maintained according to the RCD measure operation and maintenance agreements. The SCS State conservationist and FmHA State director will collaborate in arranging for correction of deficiencies. The FmHA will make other inspections as necessary to determine compliance with FmHA loan regulations and maintenance of the security property or other security interest of the Government.

(iv) When a RCD measure sponsoring local organization proposes to contract with another organization for construction, operation and maintenance, the organization and contractural arrangements must be approved by FmHA and SCS. This determination will be made prior to approval of the project agreement.

(v) The local organization will not be authorized to start construction on works of improvement to be financed, in whole or in part, with a RCD loan until:

(A) The SCS State conservationist has notified the FmHA State director that the sponsoring local organization has met all requirements for receiving RCD assistance from SCS and has furnished the State director with a schedule for beginning and completing the construction of works of improvement to be installed with RCD loan funds.

(B) The SCS has entered into a project agreement for construction of works of improvement, setting forth the mutual understanding, responsibilities, working relations and cost-sharing arrangements of the sponsoring and contracting local organizations and the SCS.

(C) The FmHA State director has notified the SCS State conservationist and the borrower in writing that the RCD loan has been closed properly and that RCD loan funds are available and the conditions under which they will be released.

(D) Any contract entered into by the local organization for materials, labor, or the construction of works of improvement to be financed with RCD loan funds has been found acceptable by both FmHA and SCS and has been approved in writing by both.

(E) All engineering plans, specifications and drawings for works of improvement to be installed with loan funds have been approved by both FmHA and the SCS.

(5) *Performing development where financial assistance (cost-sharing) is not provided by SCS:* The FmHA will be responsible for construction of project measures for these loans in accordance with FmHA policies and procedures.

(6) *Information activities:* The SCS will be responsible for preparation, release, and handling of all informational and educational material regarding RCD plans, measures and projects, including bulletins, press releases, and other public announcements. The SCS will, however, secure the recommendations of the FmHA prior to releasing pamphlets and other informational material which makes reference to RCD loans. The FmHA will, in cooperation with SCS, prepare and release informational material on receiving and processing RCD loans applications.

Subpart J—Technical Assistance and Training Grants

SOURCE: 52 FR 41950, Nov. 2, 1987, unless otherwise noted.

§ 1942.451 General.

This subpart sets forth the policies and procedures for making technical assistance and training grants authorized under section 306 (a)(16)(A) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended.

§ 1942.452 [Reserved]

§ 1942.453 Objectives.

The objectives of the Technical Assistance and Training Grant Program are to:

(a) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(b) Assist applicants in preparing applications for water and waste disposal grants made in accordance with Subpart H of Part 1942 of this chapter.

(c) Improve operation and maintenance of existing water and waste disposal facilities in rural areas.

§ 1942.454 Definitions.

(a) *Association.* An entity, including a small city or town, that is eligible for Farmers Home Administration (FmHA) water and waste disposal financial assistance in accordance with § 1942.17(b) of Subpart A and § 1942.355(a) of Subpart H of Part 1942 of this chapter.

(b) *Grantee.* An entity with whom FmHA has entered into a grant agreement under this program.

(c) *Low Income.* Median household income below the poverty line for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(d) *Rural area.* For water and waste disposal facilities the terms "rural" or "rural area" will not include any area in a city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

(e) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§ 1942.455 Source of funds.

All grants awarded will be made from not less than one (1) percent or, at the discretion of the FmHA Administrator, not more than two (2) percent of any appropriations for grants under section 306(a)(2) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)). Funds not obligated by September 1 of each fiscal year under this subpart will be used for water and waste disposal grants made in accordance with Subpart H of Part 1942 of this chapter.

§ 1942.456 [Reserved]

§ 1942.457 Eligibility.

Organizations eligible for grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service of the United States. Applicants must have the proven ability, background, experience, legal authority and actual capacity to provide technical assistance and/or training to associations as provided in § 1942.453 of this subpart.

§ 1942.458 Purpose.

Technical Assistance and/or Training Grants may be used to:

(a) Identify and evaluate solutions to water problems of associations in rural areas relating to:

(1) Source.

(2) Storage.

(3) Treatment.

(4) Distribution.

(b) Identify and evaluate solutions to waste problems of associations in rural areas relating to:

(1) Collection.

(2) Treatment.

(3) Disposal.

(c) Assist associations that have filed a preapplication with FmHA in the preparation of water and/or waste disposal loan and/or grant applications.

(d) Provide training to association personnel that will improve the management, operation and maintenance of water and waste disposal facilities.

(e) To pay the expenses associated with providing the technical assistance and/or training authorized in paragraphs (a), (b), (c), and (d) of this section.

§ 1942.459 [Reserved]

§ 1942.460 Limitations.

Grant funds may not be used to:

(a) Recruit applications for FmHA's water and waste disposal loan and/or grant program or any loan and/or grant program.

(b) Duplicate current services, replacement or substitution of support previously provided such as those performed by an association's consultant in developing a project.

(c) Fund political activities.

(d) Pay for capital assets, the purchase of real estate or vehicles, improve and renovate office space, or repair and maintain privately-owned property.

(e) Pay for construction or operation and maintenance costs.

(f) Pay costs incurred prior to the effective date of grants made under this subpart.

§ 1942.461 Equal opportunity requirements.

The policies and regulations contained in Subpart E of Part 1901 of this chapter apply to grants made under this subpart.

§ 1942.462 Environmental requirements.

The policies and regulations contained in Subpart G of Part 1940 of this chapter apply to grants made for the purposes in § 1942.458 of this subpart.

§ 1942.463 Preapplications.

(a) Applicants will file an original and one copy of SF 424.1, "Application for Federal Assistance (For Non-construction)," with the appropriate FmHA office between October 1 and December 31 each fiscal year. This form is available in all FmHA offices. Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate FmHA State Office. The FmHA State Office will forward preapplications, with any written comments, within seven working days to the National Office, Attention: Water and Waste Disposal Division. Applicants providing technical assistance and/or training in more than one State will forward the preapplication to the Administrator, Farmers Home Administration, Washington, DC 20250.

(b) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence and authority.

(2) Evidence tax exempt status from the Internal Revenue Service.

(3) Brief written narrative which includes items such as:

(i) The proposed service(s) to be provided, including the benefits of the technical assistance and/or training.

(ii) Area to be served.

(iii) Name of association(s) or type of association(s) that will be served.

(iv) Median household income of the population to be served by each association(s).

(v) Grantee's experience, including experience of key staff members and person(s) providing the technical assistance and/or training.

(vi) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(vii) Method used to select the association(s) that will receive the service.

(viii) Brief description of how the service will be provided. Such as through currently employed personnel or some other method.

(ix) Method to be used for delivery of the service, including personnel to be utilized and tasks to be contracted, if any.

(4) Latest financial information to show the organization's financial capacity to carry out the proposed work. As a minimum, the information should include a balance sheet and an income statement. A current audit report is preferred.

(5) Estimated breakdown of costs including that to be funded by grantee as well as other sources.

(6) Budget and accounting system in place or proposed.

(7) Evaluation method to determine if objective(s) of the proposed activity is being accomplished.

(c) Upon receipt of a preapplication, the FmHA National Office will:

(1) Review and evaluate the preapplication and accompanying documents; and

(2) Request from the Office of General Counsel (OGC), a legal determination of applicant's legal existence and authority to provide technical assistance and/or training. The legal opinion will be obtained from the Regional Attorney serving the area where the applicant's headquarters is located; and

(3) Normally, respond to the applicant within 45 days after December 31 of each year using Form AD-622, "Notice of Preapplication Review Action" indicating the action taken on the preapplication.

(d) Applicants whose preapplications are found to be ineligible will be given notice by use of Form AD-622 and advised of their appeal rights under Subpart B of Part 1900 of this chapter.

(e) Applicants who are eligible, but do not have the priority necessary for further consideration will be notified with Form FmHA AD-622 which includes the following statements:

"Your proposal cannot be funded within the available funds."

"You are advised against incurring obligations which cannot be fulfilled without FmHA funds."

(f) Applicants that are eligible for funding within the available funds will be provided forms and instructions for filing a complete application. Applicants should be advised against incurring obligations which cannot be fulfilled without FmHA funds.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 3861, Feb. 10, 1988; 55 FR 13503, Apr. 11, 1990]

§ 1942.464 Priority.

The preapplication and supporting information will be used to determine the applicant's priority for available funds. The following specific criteria will be considered in the competitive selection of grant recipients:

(a) Applicant's demonstrated capability and past performance in providing technical assistance and/or training to rural associations.

(b) The extent to which the population of the associations served have low income.

(c) Applicant's financial and if applicable, in-kind resources that will maximize use of technical assistance and/or training funds for direct staffing of activities that are delivered to the associations.

(d) The extent to which the project will be cost effective, including but not limited to; the ratio of proposed personnel to the cost of the project, the cost per associations served by the project, and the expected benefits from the project.

(e) How well the proposal coincides with the objectives of FmHA's Water and Waste Disposal program authorized in Subparts A and H of Part 1942 of this chapter.

(f) Applicants proposing to serve multi-state, regional, or nationwide areas.

(g) Applicants whose time frame for completion of the technical assistance and/or training grant project is twelve months or less.

§ 1942.465 [Reserved]

§ 1942.466 Application processing.

(a) Upon notification on Form AD-622 that the applicant is eligible for funding, the following will be submitted to the FmHA National Office by the applicant.

(1) SF 424.1, "Application for Federal Assistance (For Non-construction.)"

(2) Proposed scope of work detailing the training and/or technical assistance to be accomplished and time frames for completion of each task.

(3) Proposed budget.

(4) Other requested information needed by FmHA to make a grant award determination.

(b) The following forms and documents will be part of the grant docket:

(1) Form FmHA 400-1, "Equal Opportunity Agreement."

(2) Form FmHA 400-4, "Assurance Agreement."

(3) Grant Agreement signed by the applicant.

(4) Scope of work prepared by the applicant.

(5) Form FmHA 1940-1, "Request for Obligation of Funds."

(c) If the applicant fails to submit the application and related material by the date shown on Form AD-622 (normally 30 days from the date of Form AD-622), FmHA may discontinue consideration of the application.

[52 FR 41950, Nov. 2, 1987, as amended at 55 FR 13504, Apr. 11, 1990]

§ 1942.467 [Reserved]

§ 1942.468 Grant approval and obligation of funds.

(a) FmHA National Office will review the application and other documents to determine whether the proposal complies with these regulations.

(b) All grants made under these regulations will be approved and obligated by the FmHA Administrator, or designee.

(c) The obligation of funds will be handled in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter.

(d) An executed copy of the Grant Agreement and scope of work will be sent to the applicant on the obligation date, along with a copy of Form FmHA 1940-1. FmHA will retain the executed original of the Grant Agreement. The grant will be considered closed on the obligation date.

(e) If the grant is not approved, the applicant will be notified in writing of the reason(s) for rejection. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter.

§ 1942.469 Fidelity bond.

Prior to the advancing of funds, the grantee will provide fidelity bond coverage for the positions of persons entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of monies that the grantee will have on hand at any one time for technical assistance and/or training provided in accordance with the Grant Agreement. Unless prohibited by State law, the United States acting through the Farmers Home Administration, will be named as co-obligee in the bond. The bond must be obtained from a company listed in Department of Treasury Circular 570, as amended. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used. A certified power-of-attorney with effective date will be attached to the bond.

§ 1942.470—1942.471 [Reserved]

§ 1942.472 Fund disbursement.

Grantees will be reimbursed as follows:

(a) Standard Form (SF) 270, "Request for Advance or Reimbursement?" will be completed by the applicant and submitted to FmHA National Office not more frequently than monthly.

(b) Upon receipt of a properly completed SF-270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(c) Grantees are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230.

§ 1942.473 Grant cancellation or major changes.

If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the Administrator will notify the Director of Legislative Affairs and Public Information Staff (LAPIS) giving the reasons for such action. In the case of a grant cancellation, Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director of LAPIS and grant obligation cancellations will not be submitted to the National Office until 5 work days after notifying the Director of LAPIS.

§ 1942.474 Reporting.

Standard Form (SF) 269, "Financial Status Report," SF 272, "Federal Cash Transactions Report," and a project performance activity report will be required of all Grantees on a quarterly basis. A final project performance report will be required with the last SF-269. The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All multi-state, regional, and nationwide Grantees are to submit an original of each report to the FmHA National Office. Grantees serving only one State are to submit an original of each report to the FmHA State Director. The FmHA State Director will review and forward to the FmHA National Office the report with comments. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

§ 1942.475 Audit.

The Grantee will provide an audit report prepared in accordance with OMB Circular A-110, Attachment F (available at any FmHA state or district office), within 90 days after project completion.

§ 1942.476 Grant agreement.

Exhibit A of this subpart is a Grant Agreement which sets forth the procedures for making and servicing grants made under this subpart.

§ 1942.477 Grant servicing.

Grants will be serviced in accordance with the grant agreement and Subpart E of Part 1951 of this chapter. Subpart B of Part 1900 of this chapter will be followed when grants are terminated for cause.

§ 1942.478 Delegation of authority.

The authority under this subpart is redelegated to the Assistant Administrator, Community and Business Programs, except for the discretionary authority contained in § 1942.455 of this subpart. The Assistant Administrator Community and Business Programs may redelegate the authority in this section.

§§ 1942.479—1942.499 [Reserved]

§ 1942.500 OMB control number.

The collection of information requirements in this regulation have

been approved by the Office of Management and Budget and assigned OMB control number 0575-0123.

EXHIBIT TO SUBPART J

EXHIBIT A—GRANT AGREEMENT TECHNICAL ASSISTANCE AND TRAINING

This agreement is between ___________

____

(name),

____

(address), (Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA). Grantee has determined to undertake certain Technical Assistance and/or Training at an estimated cost of $______ and has duly authorized such activity. Grantee shall finance $______ of the costs through cash and in-kind contributions. The Grantor agrees to grant to Grantee a sum not to exceed $______ subject to the terms and conditions established by the Grantor; provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a)(16)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) for the purpose of defraying technical assistance and/or training costs as permitted by applicable Farmers Home Administration regulations:

Part A

Grantor and Grantee agree

1. This agreement shall be effective when executed by both parties.

2. The scope of work described by the applicant in Exhibit 1 shall be completed within ______ days from the date of this agreement.

3. Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount charged to the grant.

The information collected through the grant agreement is required to obtain a Technical Assistance and/or Training grant and is used to determine that the grant funds are used for authorized program purposes.

Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(a) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses or to fund political activities.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improve or renovate office space, or repair and maintain privately-owned property.

(iv) Recruit applications for FmHA's water and waste disposal loan and/or grant program.

(v) Duplicate current services, replacement, or substitution of support previously provided.

(b) Grant funds shall not be used to replace any financial support previously provided for or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. Grant funds will be disbursed by FmHA on a reimbursement basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all funds, property and other assets.

(a) As needed, but not more frequently than once every 30 days, an original and one copy of Standard Form (SF) 270, "Request for Advance or Reimbursement" may be submitted to FmHA.

(b) Grantee shall provide satisfactory evidence to FmHA that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(c) Where the Grantee shall have claimed credit for contributions-in-kind to the total cost of allowable expenses, the evaluation of such contributions-in-kind shall be subject to reevaluation by the Grantor at any time and any deficiency so determined by the Grantor shall be compensated by supplemental contributions by the Grantee as a condition for further disbursements by the Grantor. Specific procedures for establishing the value of in-kind contributions from third parties established in OMB Circular A-110 will govern such an evaluation. Principles for determining cost are set forth in OMB Circular A-122 and will be used in cost evaluation.

(d) If for any reason grant funds are invested, income earned on such investments shall be identified as interest income on grant funds and forwarded to the Finance Office, FmHA, St. Louis, Missouri.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) Quarterly, an original and one copy of SF 269, "Financial Status Report," SF 272, "Federal Cash Transactions Report," (due 15 working days after end of quarter) and a Project Performance report according to the schedule below:

Period and Date Due

(b) Final, an original and 1 copy of SF 269, and a Project Performance report according to the schedule below:

Due Date

Note: Final reports may serve as the last quarterly reports.

(c) The original and 1 copy of reports and forms are to be submitted to the Administrator, Farmers Home Administration, Washington, DC 20250.

6. The budget covered by this agreement is:

(a) Federal Contribution
$ ————————————

Grantee Contribution
–Cash ————————————
–in-kind ————————————
Total $ ————————————

(b) Budget.

Budget categories	Federal funds	Non-Federal share		Total
		Cash	In-kind	
Direct Charges:				
1. Personnel	$	$		$
2. Fringe benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Other				
Total direct charges.	$			
Totals	$	$		$

(c) In accordance with OMB Circular A-122, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in order activities of the State or local government.

(d) In accordance with OMB Circular A-110, Attachment J, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the Administrator, Farmers Home Administration.

7. Grantee responsibility.

(a) The scope of work is described in the attached Exhibit 1. The Grantee accepts responsibility for providing technical assistance and/or establishing and implementing a training program as set forth in scope of work. The Grantee shall:

(i) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(ii) Provide technical assistance and/or training to improve operation and maintenance of water and waste disposal facilities in rural areas.

(iii) Assist rural communities that have decided to submit an application for the FmHA Water and Waste Disposal grant program in preparing such application.

(iv) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Part B

Grantee Agrees

1. To comply with property management standards established by Attachment N of OMB Circular A-110 for expendable and nonexpendable personal property. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may

use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall be vested in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of Part B 1. (b) and (c) of this exhibit.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in Part B 1. (b) and (c) of this exhibit.

(iv) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the Grantee has title.

(i) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(*1*) Activities sponsored by FmHA.

(*2*) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to projects or programs sponsored by FmHA; second, preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in Part B 1. (b) of this exhibit, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amounts of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

(iii) FmHA shall determine whether the property can be used to meet the agency's requirements. If no need exists within FmHA, the General Services Administration's Federal Property Management Regulations (FPMR) will be used by FmHA to determine whether a need for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(*1*) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(*2*) If the Grantee is instructed to dispose of the property other than as described in

Part B 1. (b) and (c) of this exhibit, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(3) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(a) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Sources of the property including grant or other agreement number.

(iv) Whether title vests in the Grantee or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(b) Property owned by the Federal Government must be marked to indicate Federal ownership.

(c) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss; damage, or the theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(e) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(f) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(g) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used soley for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. Provide an audit report prepared in accordance with OMB Circular A-110, Attachment F, within 90 days after project completion.

5. To account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes. See Part A4. (d) of this exhibit.

6. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Part B1 of this exhibit.

7. To provide Grantor with such periodic reports as it may require of Grantee oper-

ations by designated representative of the Grantor.

8. To execute Form FmHA 400-1, "Equal Opportunity Agreement," Form FmHA 400-4, "Assurance Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirements.

9. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will to the extent legally permissible, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest accruing thereon from the date of default at the market rate for water and waste disposal loan assistance in effect on the date hereof or at the time the default occurred. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by the Grantor, at its option and without regard to: (a) prior waivers by it of previous defaults of Grantee, (b) by judicial proceedings to require specific performance of the terms of this Grant Agreement, (c) by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and, (d) the laws and regulations under which this grant is made.

10. That no member of Congress shall be permitted any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the Grant a private nonprofit organization whose membership might include a member of Congress.

11. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

12. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

13. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

14. That the Grantee shall abide by the policies promulgated in OMB Circular A-110, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

15. To the following termination provisions:

(a) Termination for cause. The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, wherever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. Grants can be terminated for cause such as: failure to use funds for authorized purposes, poor progress, untimely reports, no progress, and failure to properly account for expenditures or property.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination. Disposition of expendable and nonexpendable personal property will be in accordance with the standards of Part B 1. of this exhibit.

16. As a condition of this grant or Cooperative Agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205 b, which hereby are incorporated in this Agreement by reference, and such statutory provisions as are specifically set forth herein.

Part C

Grantor Agrees

1. That it will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to

protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on ______ 19___, has caused this agreement to be executed by its duly authorized ______ and attested and its corporate seal affixed by its duly authorized ______.

Attest:
Grantee

____

By ____________________________
(Title)

Grantor
United States of America
Farmers Home Administration
By ____________________________

____
(Title)

Subpart K—Emergency Community Water Assistance Grants

SOURCE: 55 FR 12812, April 6, 1990, unless otherwise noted.

§ 1942.501 General.

(a) This subpart outlines Farmers Home Administration (FmHA) policies and procedures for making Emergency Community Water Assistance Grants authorized under section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended.

(b) FmHA officials will maintain liaison with officials of other Federal, State, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity along with other rural residents to participate in the benefits of this program. This includes equal application of outreach activities of FmHA County and District Offices.

(e) Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1942.502 [Reserved]

§ 1942.503 Objective.

The objective of the Emergency Community Water Assistance Grant Program is to assist the residents of rural areas that have experienced a significant decline in quantity or quality of water to obtain adequate quantities of water that meet the standards set by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) (SDWA).

§ 1942.504 Definitions.

(a) Rural areas—Includes any area in any city or town with a population not in excess of 15,000 inhabitants according to the most recent decennial census of the United States. They can be located in any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

(b) Significant decline in quantity—A significant decline in the quantity is caused by a disruption of the potable water supply by an emergency such as a drought. The disruption in quantity of potable water prevents the present source or delivery system from supplying the present needs of rural residents. This would not include a decline in excess water capacity.

(c) Significant decline in qualty—A significant decline in quality of potable water is where the present community source or delivery system does not meet, as a result of an emergency, the current SDWA requirements. For a private source or delivery system a significant decline in quality is where the water is no longer potable as a result of an emergency.

§ 1942.505 [Reserved]

§ 1942.506 Eligibility.

(a) Grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include counties, cities, townships, incorporated towns and villages, boroughs, authorities, districts, and other political subdivisions of a State. Public bodies also includes Indian tribes on Federal and State reservations and other federally recognized Indian Tribal groups in rural areas.

(b) In the case of grants made to alleviate a significant decline in quantity or quality of water available from the water supplies of rural residents, the applicant must demonstrate that the decline occurred within two years of the date the application was filed with FmHA. This would not apply to grants made for repairs, partial replacement, or significant maintenance on an established water system.

§ 1942.507 Project priority.

The following paragraphs indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, FmHA officials must consider the priority items met by each application and the degree to which those priorities are met.

(a) *Applications.* The application and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(b) *State Office review.* All applications will be reviewed and scored for funding priority using Exhibit A of this subpart (available in any FmHA office). The State Director will request funds from the National Office, Attention: Director, Water and Waste Disposal Division (WWD), using Exhibits A and B of this subpart (available in any FmHA office). If an application cannot be funded, the State Director will be notified. Eligible applicants that cannot be funded should be advised by the District Director that funds are not available.

(c) *National Office review.* Each year all funding requests will be reviewed by the National Office starting November 1 and will continue as long as funds are available except for the first year in which funds are made available for this grant program. A review of funding requests the first year will start 30 days after funds are made available. Projects selected for funding will be considered based on the priority criteria and available funds. Projects must compete on a national basis for available funds, and the National Office will allocate funds to FmHA State offices on a project by project basis.

(d) *Selection priorities.* The priorities described below will be used by the State Director to rate applications and by the Director of WWD to select projects for funding. Points will be distributed as indicated in paragraphs (1) through (5) of this section and will be considered in selecting projects for funding. A copy of Exhibits 1 and 2 (available in any FmHA office) used to rate applications, should be placed in the case file for future reference.

(1) *Population:* The proposed project will serve an area with a rural population:

(i) Not is excess of 5,000—30 points.

(ii) More than 5,000 and not in excess of 10,000—15 points.

(iii) More than 10,000 and not in excess of 15,000—0 points.

(2) *Income:* The median household income of population to be served by the proposed project is:

(i) Not in excess of 70% of the statewide nonmetropolitan median household income—30 points.

(ii) More than 70% and not in excess of 80% of the statewide nonmetropolitan median household income—20 points.

(iii) More than 80% and not in excess of 90% of the statewide nonmetropolitan median household income—10 points.

(iv) Over 90% of the statewide nonmetropolitan median household income—0 points.

(3) The proposed project will correct a:

(i) Significant decline in the quantity of water available from private individually owned wells or other individual sources of water—30 points.

(ii) Significant decline in the quality of water available from private individually owned wells or other individual sources of water—30 points.

(4) Grants made in accordance with § 1942.511 (b) of this subpart to assist an established water system remedy an acute shortage of quality water or correct a significant decline in the quantity or quality of water that is available—10 points.

(5) *Discretionary:* In certain cases the FmHA Administrator may assign up to 30 points for items such as geographic distribution of funds, rural residents hauling water, severe contamination levels, etc.

[55 FR 12812, Apr. 6, 1990; 55 FR 25773, June 22, 1990]

§ 1942.508 [Reserved]

§ 1942.509 Uses.

Grant funds may be used for the following purposes:

(a) Waterline extensions from existing systems.

(b) Construction of new waterlines.

(c) Repairs to an existing system.

(d) Significant maintenance to an existing system.

(e) Construction of new wells, reservoirs, transmission lines, treatment plants, and other sources of water.

(f) Equipment replacement.

(g) Connection and/or tap fees.

(h) Pay costs that were incurred within six months of the date an application was filed with FmHA to correct an emergency situation that would have been eligible for funding under this subpart.

(i) Any other appropriate purpose such as legal fees, engineering fees, recording costs, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights associated with developing sources of, treating, storing, or distributing water.

(j) Assist rural water systems to comply with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) (FWPCA) or the SDWA when such failure to comply is directly related to a recent decline in quality of potable water. This would not apply to changes in the requirements of FWPCA or SDWA.

§ 1942.510 Restrictions.

(a) Grant funds may not be used to:

(1) Assist any city or town with a population in excess of 15,000 inhabitants according to the most recent decennial census of the United States.

(2) Assist a rural area that has a median household income in excess of the statewide nonmetropolitan median household income according to the most recent decennial census of the United States.

(3) Finance facilities which are not modest in size, design, and cost.

(4) Pay loan or grant finder's fees.

(5) Pay any annual recurring costs that are considered to be operational expenses.

(6) Pay rental for the use of equipment or machinery owned by the rural community.

(7) Purchase existing systems.

(8) Refinance existing indebtness, except for short-term debt incurred in accordance with § 1942.509 (h) of this subpart.

(9) Make reimbursement for projects developed with other grant funds.

(b) Nothing in paragraphs (a)(1) or (a)(2) of this section shall preclude rural areas from submitting joint proposals for assistance under this subpart. Each entity applying for financial assistance under this subpart to fund their share of a joint project will be considered individually.

§ 1942.511 Maximum grants.

(a) Grants made to alleviate a significant decline in quantity or quality of water available from the water supplies in rural areas that occurred within two years of filing an application with FmHA cannot exceed $500,000.

(b) Grants for repairs, partial replacement, or significant maintenance on an established system cannot exceed $75,000.

(c) Grants under this subpart, subject to paragraphs (a) and (b) of this section, shall be made for 100 percent of eligible project costs.

§ 1942.512 [Reserved]

§ 1942.513 Set-aside.

At least 50 percent of the funds appropriated for this grant program shall be allocated to rural areas with populations not in excess of 5,000 inhabitants according to the most recent decennial census of the United States. Also, at least 70 percent of all grants made under this grant program shall be for projects funded in accordance with § 1942.511(a) of this subpart.

§ 1942.514 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(b) *Environmental requirements.* The requirements of subpart G of part 1940 of this chapter apply to grants made under this subpart.

(c) *Uniform Relocation and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulations.

(d) *Flood and mudslide hazard area precautions.* If the project is located in a flood or mudslide area, then flood or mudslide insurance must be provided as required in subpart A of part 1806 of this chapter (FmHA Instruction 426.2).

(e) *Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free work place.* All projects must comply with the requirements set forth in the U.S. Department of Agriculture regulations 7 CFR part 3017 and FmHA Instruction 1940-M (available in any FmHA office).

(f) *Intergovernmental review.* All projects funded under this subpart are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, subpart V and FmHA Instruction 1940-J (available in any FmHA office).

§§ 1942.515—1942.250 [Reserved]

§ 1942.521 Application processing.

(a) To the extent possible, an application under this subpart will be approved or disapproved within 60 days of the date that a complete application and all related material is submitted to FmHA.

(b) The material submitted with the application should include the Preliminary Engineer Report, population and median household income of the area to be served, description of project, and nature of emergency that caused the problem(s) being addressed by the project. The documentation must clearly show that the applicant has had a significant decline in the quantity and/or quality of potable water or an acute shortage of potable water and the proposed project will eliminate the problem. For projects to be funded in accordance with § 1942.511(a) of this subpart, evidence must be furnished that a significant decline in quantity or quality occurred within two years of filing the application with FmHA.

(c) The District Director should assist the applicant in application assembly and processing.

(d) Appropriate application review and approval procedures outlined in § 1942.2 of subpart A of part 1942 of this chapter will be followed. The preapplication stage is eliminated in processing an application under this subpart.

(e) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1942.507 of this subpart. A priority rating will be assigned to each application by the State Director.

(f) When the National Office has allocated funds to the State for a project, applicable provisions outlined in §§ 1942.5 of subpart A and 1942.366 of subpart H of part 1942 of this chapter will be followed in preparation of the grant docket. This would include development of an operating budget showing that the applicant can meet all its obligations and provide the intended services.

(g) When favorable action will not be taken on an application, the applicant will be notified in writing by the District Director of the reasons why the request was not favorably considered. Notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with subpart B of part 1900 of this chapter.

(h) FmHA State Directors are authorized to approve grants made in accordance with this subpart A of part 1901 of this chapter.

(i) Funds will be obligated and approval announcement made in accordance with the provisions of § 1942.5(d) and subpart A of part 1942 of this chapter.

[55 FR 12812, Apr. 6, 1990; 55 FR 25773, June 22, 1990]

§ 1942.522 Planning development and procurement.

Planning development and procurement for grants made under this subpart will be in accordance with §§ 1942.9 and 1942.18 of subpart A of part 1942 of this chapter. A certification should be obtained from the State agency or the Environmental Protection Agency if the State does not have primacy, stating that the proposed improvements will be in compliance with requirements of the SDWA.

§ 1942.523 Grant closing and disbursement of funds.

(a) Grants will be closed in accordance with instructions received from the Office of the General Counsel (OGC).

(b) Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," will be executed by all applicants. District Directors and State Directors are authorized to execute the agreement on behalf of FmHA.

(c) The grant will be considered closed on the date Form FmHA 1942-31 is signed by FmHA. The Finance Office will be notified of the grant closing date. FmHA will retain the original of the Grant Agreement.

(d) FmHA's policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Grant funds will be disbursed by using multiple advances in accordance with § 1942.17(p)(2) of subpart A of part 1942 of this chapter.

§§ 1942.524—1942.530 [Reserved]

§ 1942.531 Performing development.

(a) Applicable provisions of §§ 1942.17(p) and 1942.18(o) of subpart A of part 1942 of this chapter will be followed in performing development for grants made under this subpart.

(b) After filing an application in accordance with § 1942.521 of this subpart and when immediate action is necessary, the State Director may concur in an applicant's request to proceed with construction before funds are obligated provided the requirements of subpart G of part 1940 of this chapter are complied with. The applicant must be advised in writing that:

(1) Any authorization to proceed or any concurrence in bid awards, contract concurrence, or other project development activity, is not a commitment by FmHA to provide grant funds under this subpart.

(2) FmHA is not liable for any debt incurred by the applicant in the event that funds are not provided under this subpart.

§ 1942.532 Grant cancellation.

The District Director or State Director may prepare and execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office should receive a copy of Form FmHA 1940-10. The applicant's attorney and engineer may be provided a copy of Form FmHA 1940-10. A copy should also be sent to the National Office, Attention: Water and Waste Disposal Division.

§ 1942.533 [Reserved]

§ 1942.534 Grant servicing.

(a) Grants will be serviced in accordance with § 1951.215 of subpart E of part 1951 of this chapter and subpart O of part 1951 of this chapter.

(b) The grantee will provide an audit report in accordance with § 1942.17(q) of subpart A of part 1942 of this chapter.

§ 1942.535 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this subpart. The initial and subsequent grants made to complete a previously approved project must comply with the maximum grant requirements set forth in § 1942.511 of this subpart.

§ 1942.536 [Reserved]

§ 1942.537 Forms, Guides, and Attachments.

Exhibit C of subpart H of part 1942 of this chapter, Exhibits A and B of this subpart, and Forms referenced (all available in any FmHA office) are for use in administering grants made under this subpart.

§§ 1942.538—1942.549 [Reserved]

§ 1942.550 OMB control number.

The reporting and recordkeeping requirements contained in this instruction has been approved by the Office of Management and Budget and assigned OMB control number 0575-0074. Public reporting burden for this collection of information is estimated to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

EXHIBIT A—EMERGENCY COMMUNITY WATER ASSISTANCE GRANT PROGRAM PROJECT SELECTION CRITERIA

EXHIBIT B—TRANSMITTAL MEMORANDUM

NOTE: The exhibits are not published in the Code of Federal Regulations. They are available in any FmHA office.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

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EXHIBIT TO SUBPART B

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

Subpart C—[Reserved]

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

SOURCE: 43 FR 55895, Nov. 29, 1978, unless otherwise noted.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

SOURCE: 53 FR 35692, Sept. 15, 1988, unless otherwise noted.

§ 1943.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers, farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of this subpart for making FP loans to entrymen on unpatented public lands.

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family member for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expoenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments of all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operations and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and the entity must be authorized to own both real and personal property and to incur debts in its own name.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant. An applicant/borrower who, because of their identity as a member of a group, has been subjected to racial or ethnic prejudice or cultural bias without regard to their individual qualities.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Undivided right. An undivided right of title, or a title to an undivided portion of an estate, that is owned by one of two or more tenants in common or joint tenants before division.

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA.

(c) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, but have prior National Office approval before being issued.

§§ 1943.8—1943.9 [Reserved]

§ 1943.10 Preference.

(a) In addition to the preference established in Subpart A of Part 1910 of this chapter, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's farm ownership (FO) loan fund allocation designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in purchasing farmland. However, this requirement does not preclude the use of the State's regular allocation of FO funds for loans for other authorized FO loan purposes to applicants who are members of socially disadvantaged groups. (See exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration (FmHA) Direct Farm Ownership (FO) Loans and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups".)

[53 FR 35692, Sept. 15, 1988, as amended by 55 FR 21527, May 25, 1990]

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in subpart A of part 1910 of this chapter.

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with consideration given to the requirements in Exhibit M of subpart G of part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO loans or other assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

[55 FR 21528, May 25, 1990]

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Applications for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immgiration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment, and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 of this subpart).

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its

members, stockholders, partners, or joint operators as individuals.

(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporations(s), partnership(s) or joint operation(s).

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641 "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(iv) Honestly try to carry out the conditions and terms of the loan. This requirements must be met by the individual members, stockholders, partners or joint operators.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(6) If applying as a limited resource applicant, as defined in § 1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners or joint operators must own *or* operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (i) All of the members of the entity are related by blood or marriage, (ii) all of the members are or will operators of the entity, and (iii) the majority interest

holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990]

§ 1943.13 Outreach program for applicants/borrowers who are members of socially disadvantaged groups.

The purpose of this section is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Applicants/ Borrowers who are members of socially disadvantaged groups.

(a) *Policy.* The FmHA FO Loan and Acquired Property Outreach Program is a concerted effort to:

(1) Make direct FO loan funds and the acquisition of inventory farmland more available to members of socially disadvantaged groups.

(2) Surface and correct problems and obstacles that prevent the participation of members of socially disadvantaged groups in the FO loan and credit sale programs.

(3) Increase the number of direct FO loans and credit sales made to members of socially disadvantaged groups in targeted and nontargeted areas.

(4) Target direct FO loan funds and acquired properties, as outlined in Exhibit B of this subpart, to ensure participation of members of socially disadvantaged groups in these programs.

(5) Provide pamphlets, publications and general information on the direct FO loan and credit sale programs to members of socially disadvantaged groups.

(6) Provide assistance to members of socially disadvantaged groups to assure that the application process is expedient and complete. Assistance will be provided to borrowers of socially disadvantaged groups through special farm initiatives to assure that sound operating procedures are implemented to enhance the borrower's chances for successfully achieving the objectives of the direct FO loan program.

(b) *Field action.* The State Director shall designate the Farmer Programs Chief to coordinate the Farmers Home Administration (FmHA) Farm Ownership (FO) Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. The State's Civil Rights Coordinator will act as a resource person for this program. The Farmer Programs Chief will:

(1) Maintain close liaison with local, State and national organizations serving social disadvantaged groups to ascertain the reasons for the lack of participation of members of socially disadvantaged groups in FmHA direct FO loan and acquired farmland programs.

(2) Work closely with County Supervisors, District Directors, and National Office officials to remove obstacles and solve problems relating to the making of direct FO loans and credit sales to members of socially disadvantaged groups.

(3) Attend meetings of local, State, and Federal Governments and private organizations concerned with the economic and social development of members of socially disadvantaged groups.

(4) Train members of socially disadvantaged groups, interested individuals and groups involved with socially disadvantaged activities, in the packaging of applications and distribution of materials for use in the direct FO loan and credit sale programs.

(5) Provide pamphlets and publications on the direct FO loan and credit sale program.

(6) Initiate special media outreach activities to inform members of socially disadvantaged groups of the availability of targeted and non-targeted direct FO loan funds and acquired farmland.

(i) Information must be provided to community and farm oriented organizations, agriculture colleges, other USDA agencies and community leaders who are active in the farming area.

(ii) Newspaper articles, radio announcements and public television broadcasts will be used to publicize the FmHA Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. *State Directors and required to publicize the program at least twice annually in a newspaper most used by members of socially disadvantaged groups.* This effort will be monitored by the National Office through Coordinated Assessment Reviews (CARs) and special planned visits to selected States.

(c) *Reports.* (1) State Directors will keep the Assistant Administrator, Farmer Programs, advised of any problems encountered in carrying out the FmHA Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Members of Socially Disadvantaged Groups which prevent their participation in this program.

(2) *Each State Director will make a semi-annual memorandum report to the Assistant Administrator, Farmer Programs, on May 1 and September 30 of each fiscal year on the Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of Socially Disadvantaged Groups.* The report will summarize accomplishments on the items set forth in § 1943.13(b) of this subpart. The following should also be included in the report:

(i) The State and County of each direct FO loan and credit sale made to applicant/borrowers who are members of socially disadvantaged groups.

(ii) Number of applications for direct initial and subsequent FO loans and credit sales received during the period.

(iii) Number of direct initial and subsequent FO loans and credit sales approved during the period.

(iv) Number of applications on hand for direct initial and subsequent FO loans and credit sales at the end of the reporting periods.

(v) Number of announcements placed in local newspapers, on radio and public television.

(vi) Amount of each initial and subsequent direct FO loans and credit sales approved during the reporting periods.

(vii) Total dollar value of direct initial and subsequent FO loans and credit sales approved during the reporting periods.

§§ 1943.14—1943.15 [Reserved]

§ 1943.16 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(2) An applicant's portion of the cost of land which is being subdivided.

(3) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm production and management conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the FO security requirements for taking a junior lien.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all of a specific part of the purchase price.

(b) Construct, buy, or improve buildings and facilities needed on or in close proximity to, the applicant's farm, including:

(1) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants for nonfarm enterprises, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Construction costs for methane and gas facilities and essential equipment.

(c) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water, powerlines, gas lines, and other facilities necessary for the successful operation of the farm may be located outside the land owned, provided that appropriate rights or easements are obtained to ensure that the rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds are advanced is likely to exceed $1,000, the applicant will assign the payment to FmHA.

(1) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19(b) of this subpart) or on land in which the applicant owns an undivided interest, provided:

(i) The amount of loan funds used on such land is limited to $25,000.

(ii) There is adequate security for the loan; and

(iii) The tract with defective title or undivided interest is not to be included in the appraisal report.

(2) Funds may be used to pay for development costs on land leased by the applicant provided:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of the loan funds used for improvements on leased land will not exceed $10,000.

(d) Refinance debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance or guarantee any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refinanced unless such refinancing is necessary to enable borrowers to continue farming. The State Director's consent is required before FO funds can be used to refinance other FmHA debts.

(e) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, and first year insurance premiums, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(f) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland. A major portion of the goss total income must be farm income. The nonfarm enterprise income will be supplemental income.

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding insured FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed the lesser of $200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29 (b) of this subpart is exceeded.

(b) Loans my not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. Refer to Subpart LL of Part 2000 of this chapter, "Memorandum of Understanding Between FmHA and U.S. Fish and Wildlife Service," for assistance in implementation.

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate is established in this Exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4(i) of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise form, when appropriate, indicate that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) A borrower with limited resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.6 of Subpart B of Part 1924 of this chapter) and at any time a servicing action such as reamortization or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 Subpart A of Part 1951 of this chapter.)

§ 1943.19 Security.

(a) *General.* Each FO loan will be secured by real estate or by real estate and a combination of chattels and/or other security.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm owned or to be owned by applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit lien provided:

(A) The part excluded from the security is not included in the appraisal report, and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien or real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.2), except as modified by the "Memorandum of Understanding-FHA-FCA," Exhibit B of this Subpart.

(4) The designated attorney, title insurance company, or the OGC will furnish on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) Chattel security liens will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1941 and Subpart A of Part 1962 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations, or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *State supplements*. Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Security—nonfarm enterprise.* When an FO loan is made just to finance a nonfarm enterprise, even though a majority of the products are used on the farm such as alcohol or methane gas, a lien will be taken on the nonfarm enterprise facility and sufficient other property to adequately secure the loan. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(g) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals* who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an FO loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.20—1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part

1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400-4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements including Subpart LL of Part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic or nonfarm enterprise purposes: installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific re-

quirements applicable to their operations. Before a loan is closed, applicants must provide evidence that they have received an ATF operating permit.

§ 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings, approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm. A real estate lien will be taken on such a dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(iv) A nonfarm enterprise facility does not have to be physically located on the farm.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in Subpart A of Part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.23(a) of this subpart for information about mudslide and flood insurance.

(3) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance.

(4) Personal property insurance will be obtained to insure against chattel security losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Income from nonfarm enterprises.* Nonfarm enterprises will be analyzed to determine soundness.

(1) Form FmHA 431-4, "Business Analysis--Nonagricultural Enterprise," will be used to document nonfarm enterprises unless the applicant uses another suitable form.

(2) The net cash income from the nonfarm enterprise will be entered as nonfarm income in the Farm and Home Plan.

(g) *Other real estate and assets.* Other assets not used directly in the farming operation will be handled as follows:

(1) FO loans may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(i) The real estate or interests therein furnish employment or income which is essential to the applicant's success.

(ii) Sale of the property will not eliminate the need for FmHA credit.

(iii) Retention of the real estate will not cause the operation to be larger than a family farm.

(2) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree by signing Form FmHA 443-17, "Agreement to Sell Nonessential Real Estate," to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years after closing.

(3) The applicant must agree to use the proceeds from the sale of other real estate to:

(i) Pay costs and taxes connected with the sale;

(ii) Reduce the FmHA debt or any prior lien;

(iii) Make essential capital purchases; or

(iv) Pay essential farm and home expense.

(4) Real estate or an interest in real estate which is non essential to the operation and is retained after loan closing, will not be included in:

(i) The appraisal report.

(ii) The security instrument for the loan.

(iii) The total against the security.

(h) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided;

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(i) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(j) *Subdivision of large tracts of farmland, other than FmHA inventory farms, into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making

FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, right-of-way, easements, and other services.

(4) Disposition or omisson of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(k) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts abainst the farm, unless the total debt against the security would be within its market value.

(l) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area, the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate wil be expected to pay the current rate when able to do so.

§ 1943.25 Options, planning and appraisals.

(a) *Optioning land.* an applicant is responsible for obtaining options on real property bought. Form FmHA 440-34, "Option to Purchase Real Property," should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;

(iv) Access to the land or any part of it;

(v) The party responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The aplicant shoud decide if the applicant wants the option recorded and is responsible for paying any recording fees.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee or contractor authorized to make farm appraisals when real estate is taken as security. The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least *one* of the following qualifications:

(i) Certification by a National or State appraisal society.

(ii) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for Farmer Program loans and will be specifically included as part of the appraised value of the real estate securing the loans.

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value, or if appropriate, the current cash value will be determined.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989]

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. The provisions of Subpart E of Part 1901 of this chapter will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) Subpart R of Part 2000 of this chapter, "Memorandum of Understanding FHA-FCA," (available in any FmHA office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA loans. It should also cover items such as appraisal methods, title clearances, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.29 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured FO loans may be made simultaneously with other FmHA loans, and to borrowers presently indebted to FmHA, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.

(b) An insured FO loan may be made to a borrower with an outstanding guaranteed FO, SW, or RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed $300,000 at loan closing.

(2) The outstanding combined insured and guaranteed FO principal balance owed by the loan applicant, or owed by anyone who will sign the note as cosigner evidencing personal liability, will not exceed the authorized guaranteed FO loan limit providing the portion representing the insured FO indebtedness does not exceed the insured FO loan limit. The deciding factors are the type of entity and the personal liability of the entity members. Individuals, who are members or stockholders of a cooperative or coproration that is indebted for a $200,000 insured and $100,000 guaranteed FO loan, can each borrow a $200,000 insured and $100,000 guaranteed FO loan, or any combination of insured or guaranteed FO loan funds that does not cause them to exceed the individual insured or guaranteed FO loan limits, provided they conduct separate farming operations as individuals and they have not signed for personal liability for the entity FO debt. Likewise, such entities, whose members or stockholders are individually indebted for the maximum insured or guaranteed FO loan limits, may borrow the maximum insured or guaranteed FO loans providing none of the members or stockholders are required to pledge personal liability for the entity debt. Partners or joint operators of a partnership or joint operation, which are indebted for a $200,000 insured and a $100,000 guaranteed FO loan, cannot borrow additional FO funds as individuals in a separate operation, because they are each personally liable for the total entity debt. Likewise, such entities consisting of individuals who are indebted for the maximum insured or guaranteed FO loan limits, are not eligible for FO loan assistance.

(3) Different lien positions on real estate are considered separate and identifiable collateral.

(4) All other requirements of the loan are met.

(c) New applicants and borrowers indebted to FmHA and/or and FmHA guaranteed lender(s) for an EE loan may be considered for an FO loan(s) provided their total outstanding principal indebtness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any SW, RL OL and FO loans will not exceed $650,000.

(d) A borrower may use the same collateral to secure two or more loans insured or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990]

§ 1943.30 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440-2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.31 [Reserved]

§ 1943.32 Loan docket processing and forms.

(a) *Forms.* FmHA forms are available in any FmHA office. The following table is a guide on the forms needed and distribution:

FmHA form no.	Name of form	Total no. copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement	2	-0	1-O	1-C
400-3	Notice of Contractors and Applicants	3		1-C	1-C
400-4	Assurance Agreement	2	2-O&C	1-O	1-C
400-6	Compliance Statement	3		1-O	1-C
[1] 403-1	Debt Adjustment Agreement	3(5)	1-O	1-O	1-C
410-1	Application for FmHA Services	1	1-O	1-O	1-C
410-9	Statement Required by the Privacy Act	2	2-O&C	1-C	1-O
410-10	Privacy Act Statement to References	2(8)			1-C
[1] 422-1	Appraisal Report Farm Tract	1		1-O	
1910-11	Applicant certification Federal Collection policies for consumer or commercial debts	2	1-O2C	1-O	1-C
[1] 422-2	Supplemental Report Irrigation, Drainage, Levee, and Minerals	1		1-O	
[1] 1924-1	Development Plan	2(3)	1-O	1-O	1-C
[1] 427-8	Agreement with Prior Lienholder	3(6)	1-O	1-C	
[1] 431-1	Long-Time Farm and Home Plan	2 2-O&C	1-C	1-O	
[1] 431-2	Farm and Home Plan	2(2)	1-O	1-O	1-C
[1] 431-4	Business Analysis Nonagricultural Enterprise	2	1-O	1-C	1-O
1940-1	Request for Obligation of Funds	4(4)	2-O&C(7)	3-O&2C	1-O
440-2	Country Committee Certification or Recommendation	1		1-O	
[1] 440-9	Supplementary Payment Agreement	2	1-O	1-O	1-C
[1] 440-21	Appraisal of Chattel Property	1		1-O	
[1] 440-32	Request for Statement of Debts and Collateral	2	1		
[1] 440-34	Option to Purchase Real Property	3(1)	2-O&C	1-O	1-C
440-45	Nondiscrimination Certificate (Individual Housing)	2	1-O	1-O	1-C
1940-21	Environmental Review	1		1-O	
1940-22 or Exhibit H, Subpart G, Part 1940					
[2] 443-12	Farm Ownership and Individual Soil and Water Fund Analysis	3		1-C	
[1] 443-17	Agreement to Sell Nonessential Real Estate	2	2-O&C	1	1-C
[1] 1940-20	Request for Environmental Information	2	1-O		
[1] 1922-11	Appraisal For Mineral Rights	1		1-O	
[1] 443-8	Agreement (Between Seller, Purchaser, and Tenant)	4	4	3	1-C

O—Original; C—Copy.

[1] When applicable.

[2] Not used when a credit sale is processed without a loan.

Notes to Table

(1) Signed copy of option previously delivered to the seller.

(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.

(3) When the Contract Method is used, three copies of plans and specifications will be required.

(4) Signed copy to applicants. An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.

(5) Signed copy to creditor.

(6) Copy to lienholder.

(7) Applicant must sign and date this form.

(8) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

(b) *Other docket items.* The running record and correspondence pretaining to the loan application and docket will be included. Other items may include supplementary information to Farm and Home Plans, nonfarm enterprises, and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 28019, July 5, 1989; 54 FR 29331, July 12, 1989; 54 FR 47959, Nov. 20, 1989; 55 FR 21528, May 25, 1990]

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible.

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee.

(iii) Funds are requested for authorized purposes.

(iv) The proposed loan is based on a feasible plan. Planning forms other the Form FmHA 431-2 may be used when they provide the necessary information.

(v) The security is adequate.

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approving official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official or the reasons will be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal. (See Subpart B of Part 1900 of this chapter.)

(3) Item furnished by the applicant during docket processing will be returned.

§ 1943.34 Requesting title service and accepting option.

When the loan is approved, the following action will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1) when required, if this has not been done.

(b) The applicant will sign Form FmHA 440-35, "Acceptance of Option," and send the original to the seller if land is being acquired. A copy will be kept in the case folder.

(c) The applicant will arrange with the seller to take possession when land is being acquired.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989]

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agree upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing of if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loans funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indi-

cate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions;

(1) Complete and distribute Form FmHA 1940-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum will be attached to the revised forms and sent to the State Office.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989]

§§ 1943.36—1943.37 [Revised]

§ 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgate loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1), except as modified for loans of $10,000 or less in § 1943.19 (b)(4) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440-25, "Financing Statement" or, when authorized, Form FmHA 440-A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirments or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so, and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out, and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or an authorized State Form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 405-1, "Management System Card—Individual," to insure that the proceeds, or the specified portions of the proceeds assigned to FmHA from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If the co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. Any other individuals' signatures needed to assure the required security will be obtained as provided in State supplements, and they will be personally liable for the debt.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgage title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21529, May 25, 1990]

§§ 1943.39—1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter and/or Subpart S of Part 1951 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter and/or Subpart S of Part 1951 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.45—1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBITS TO SUBPART A

EXHIBIT A—FARMERS HOME ADMINISTRATION LOANS TO ENTRYMEN ON UNPATENTED PUBLIC LANDS

I *GENERAL:* This Exhibit provides additional policies and procedures applicable to (1) insured Farmers Home Administration (FmHA) loans to homestead and desertland entrymen which are to be secured by real estate, and (2) taking of real estate mortgages on entries to secure Farm Ownership, Soil and Water, Individual Recreation, Operating, Emergency, Single Family Housing, and Farm Labor Housing loans in connection with loan making and servicing.

A *Authority.* The authorizations contained in this Exhibit clarify security and servicing for loans to entrymen and are based on Public Law 361. Attachment 1 is a Memorandum of Understanding between the Department of the Interior and the Department of Agriculture and outlines the general procedures to be followed when loans are made to entrymen. Reference to Guaranteed Loans in the Memorandum of Understanding is not applicable.

B *Cooperation Between the Department of Agriculture and the Department of the Interior.* The extension of financial assistance and taking of real estate mortgages authorized in paragraph I A will be facilitated through the cooperation of the FmHA, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), as provided in the Memorandum of Understanding.

C *Special Policies Applicable to Dwellings, Land Improvement and Ownership.* An FmHA loan will not be made to an applicant who lacks the capital or who cannot obtain credit to provide (1) any required habitable dwellings within the statutory period specified in paragraph I D for the establishment of residence, and (2) land development sufficient for success but in no case less than that necessary to meet the entry requirements. The Notice of Allowance of Entry is adequate to meet the ownership requirement until the patent is issued.

D *Patent Requirements.* All entrymen will be expected to keep in contact with appropriate officials of the BLM, and BR and comply with pertinent laws and regulations of these Agencies relating to the issuance of patents for homestead or desertland entries. When applicable, reclamation proof must be filed by the borrower at the earliest possible date. Likewise, FmHA personnel concerned with making and securing FmHA loans to entrymen should acquaint themselves with BLM and BR representatives and keep informed of their regulations relating to the issuance of patents for homestead or desertland entries, including but not limited to the following:

1 RESIDENCE AND DEVELOPMENT REQUIREMENTS. A homestead entryman must established residence upon the tract entered within 6 months after date of the entry unless an extension of time is allowed and must maintain a residence there for 3 years. The entryman should notify the authorized officer of the BLM upon establishing residence. When an FmHA loan is made for any purpose, the requirements of the applicable FmHA regulations must be met. Likewise any residence or development requirements of BLM or BR will be met.

2 FINAL PROOF. Specific requirements for final proof for homestead entrymen is found in 43 CFR 2515.7 and final proof for desertland entrymen is found in 43 CFR 2521.6.

a Homestead Entryman: Final proof must be filed within 5 years from the date of allowance of entry. A patent will not be issued until the entryman has submitted final proof. Final proof must show that (1) a habitable dwelling is on the land at the time proof is submitted, (2) residence requirements have been met, (3) the improvements are of such character as to show good faith, and (4) the entryman is a citizen of the United States. When the entryman is ready to submit final proof the entryman should notify the BR and request instructions regarding the procedure to be followed.

b Desertland Entryman: Final proof must be made within 4 years from the date of entry. General requirements of the BLM that must be met include: (1) Filing a map at the initiation of the entry showing the method of irrigation and the proposed source of water supply, (2) an annual expenditure for 3 years of not less than $1 for each acre in the necessary development of the land, (3) filing a map at the end of the third year showing the character and extent of improvements, and (4) yearly proof of expenditures containing statements of two or more credible witnesses who have knowledge that the expenditures were made.

The County Supervisor should consult the BLM official for any additional requirements of the entryman such as preparing a notice of intention to make final proof, publication of final proof and submission of final proof.

3 RECLAMATION PROOF. Reclamation proof for homestead entryman may be submitted with, or at any time after, the submission of homestead proof. In additon to the final homestead proof mentioned in paragraph I D 2, the filing of reclamation proof is required as a condition for obtaining a patent to any entry within a reclamation project. Reclamation proof must show reclamation and cultivation of at least one-half of the irrigable area in the entry for 2 years immediately preceding the date of submission of proof and the payment of all reclamation charges due at that time. Reclamation proof, in proper form, must be submitted to the official in charge of the project accompanied by the payment of final homestead commissions.

II *LOAN PROCESSING:* When making an FmHA loan to be secured by the entryman's land, existing FmHA policies, procedures, and loan authorities applicable to the particular type of loan will be met, except as follows:

A *Applications.* 1 APPLICATIONS FROM ENTRYMEN NOT IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA loan from an entryman with respect to public land not within a Federal reclamation project will be considered only after the entryman has selected a farm and received the Notice of Allowance of Entry from BLM. The original or a copy of the document showing allowance of entry must be attached to Form FmHA 410-1, "Application for FmHA Services."

2 APPLICATIONS FROM ENTRYMEN IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA

loan from an entryman with respect to public land within a Federal reclamation project will not be considered until after the entryman has received a Certificate of Eligibility from BR and has selected a farm. If at the time of making application the entryman has received the Notice of Allowance of Entry from BLM, he will attach the original or a copy of such document to Form FmHA 410-1. If the entryman has not received the Notice of Allowance of Entry, a copy of the Certificate of Eligibility must be attached to the FmHA application. However, the docket will not be approved until the original or a copy of the document showing Notice of Allowance of Entry has been received from the applicant and placed in the loan docket.

3 SUPPLEMENTAL INFORMATION ON APPLICANT. At the time of making application for an FmHA loan to be secured by real estate, the entryman may be requested to authorize the FmHA to obtain from BLM or BR any available information concerning the entryman's application for homestead, desertland, or reclamation entry for use by the FmHA in determining the entryman's eligibility for the loan as provided in the Memorandum of Understanding.

B *Special Items in Development of Loan Dockets for Loans to be Secured by the Entryman's Land.* Loan dockets for loans to entrymen will be prepared and distributed in accordance with the applicable FmHA regulations, except as modified by this paragraph.

1 DEVELOPMENT PLAN. An extra copy of Form FmHA 1924-1, "Farm Development Plan" will be prepared and sent to BLM in each case. When the entryman's farm is located in a Federal reclamation project, any development items listed on Form FmHA 1924-1 must be consistent with the overall plans for development of the reclamation project. Consequently, when Form FmHA 1924-1 provides for the leveling of land or the installation of farm distribution and surface drainage systems another extra copy will be prepared and sent to the Reclamation Project Officer as soon as the County Supervisor determines that there is a reasonable likelihood that the loan will be made. If Form FmHA 1924-1 conflicts with the overall BR plans for the development of the Federal reclamation project, officials of the BR will so advise the County Supervisor. The processing of the loan will not be delayed while awaiting such advice from BR but the FmHA loan will not be closed until Form FmHA 1924-1 is revised to make it consistent with the BR plans. The County Supervisor will advise the Project Officer or Authorized Officer in writing whenever changes are made in the plans approved by the FmHA.

C *Title Clearance.* 1 The entryman applicant will be required to furnish and pay for a certified statement prepared by a qualified title examiner or abstractor or as otherwise required by a State supplement which will include finding with respect to any outstanding land leveling contracts and any other claims of any kind on record against the entry. This certified statement will be included in the loan docket. Where there is an outstanding land leveling contract, the applicant's copy of such contract also will be included in the loan docket and returned to the borrower when the loan is closed.

2 The State Director, upon advice from the Office of the General Counsel, will inform the County Supervisor regarding the acceptable form of certified statement required in paragraph II C 1.

D *Loan Closing.* Except as provided by this Exhibit, FmHA loans will be closed in accordance with the applicable FmHA regulation.

1 REAL ESTATE MORTGAGE FORMS. Whenever the entry is located within a Federal reclamation project two extra copies of Form FmHA 427-1, "Real Estate Mortgage," will be prepared. If the entry is not within a Federal reclamation project, one extra copy of the real estate mortgage will be prepared. After the loan has been closed, a conformed copy of the real estate mortgage will be sent to BLM and, if the entry is located in a Federal reclamation project, a conformed copy of the mortgage also will be sent to the BR. The entryman's serial number which appears on the original document showing Notice of Allowance of Entry will be typed on the original, and the conformed copies of the Mortgage for BLM and BR will indicate the date and place of recordation and the book and page numbers.

2 COUNTY OFFICE RECORD OF ALLOWANCE OF ENTRY. When the loan is closed a copy will be made of the original document showing Notice of Allowance of Entry for the borrower's county office case folder, unless a copy was funished. The County Supervisor will sign the following certification which will be typed on this copy:

"I hereby certify that this is an exact copy of the Notice of Allowance of Entry issued by the BLM to ———————— (Entryman's Name) residing at ———————— (Entryman's Address)

" ————————————

County Supervisor

When the original document showing allowance of entry is furnished, it will be returned to the borrower.

3 ENTRIES REQUIRED ON MANAGEMENT SYSTEM CARDS. Upon closing the loan, the County Supervisor will enter a notation on the borrower's Management System Card (Form FmHA 405-1) as to the date when the borrower must submit final proof to the BLM in fulfillment of the requirements to obtain a patent. If residence

has not been established, a notation also will be made on the Management System Card of the date such residence must be commenced. It will be the responsibility of the County Supervisor to follow through to see that the borrower completes these actions.

III *MORTGAGE ON REAL ESTATE FOR ADDITIONAL SECURITY.* When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in Subpart A of Part 1965 of this chapter (FmHA Instruction 465.1). In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in a Federal reclamation project, a copy of the mortgage also will be sent to the BR.

IV *DEFAULT AND DISPOSAL OF UNITS:* The County Supervisor will coordinate with the local BLM and BR representatives and keep the State Director currently advised on any cases in default or where default is anticipated. The State Director will be guided by Attachment I and advice of the Office of the General Counsel in fulfilling FmHA's responsibilities for disposal of any units on which a patent has not been issued. Units on which a patent has been issued will be serviced by applicable FmHA procedures.

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF THE INTERIOR RELATING TO FINANCIAL ASSISTANCE BY THE FARMERS HOME ADMINISTRATION TO ENTRYMEN ON PUBLIC LANDS

PART I—PURPOSE AND DEFINITIONS

A. *Purpose.* The purpose of this memorandum is to outline the general procedure to be followed by the Farmers Home Administration (FHA), the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), when FHA extends financial assistance to entrymen on unpatented public lands, including public land in reclamation projects.

B. *Definitions.* Unless otherwise indicated in this memorandum:

(1) The term "unit" will be used to describe an adequate family farm, less than adequate family farm, a portion of a farm or any other tract of land.

(2) The term "FHA" also includes its insured lenders and guaranteed lenders.

(3) The term "outstanding balance" includes (a) the unpaid indebtedness under the FHA mortgage, (b) any unpaid costs owed to BR for construction by it of a special distribution system to serve a unit where such costs have been allocated to the unit as a separate item, and (c) any portion of an SW association loan made by FHA for construction of a domestic water system to serve the unit and secured by a lien on the unit. It does not include any portion of an SW association loan made by the FHA for construction of a domestic water system to serve the unit and not secured by a lien on the unit, nor project construction costs charged to the unit.

(4) Pub. L. 361, 81st Congress (7 U.S.C. 1006a and 1006b), is referred to as "Pub. L. 361." It applies to Farm Ownership (FO), Operating (OL), Soil and Water Conservation (SW) loans made to individuals and Recreation (RL) loans to individuals under the Consolidated Farm and Rural Development Act of 1972 (7 U.S.C. 1921) and prior laws. It does not apply to Emergency (EM) loans made under that act or prior laws, nor to Housing (RH) loans made under Title V of the Housing Act of 1949 (42 U.S.C. 1471), or to any other loans made or administered by FHA.

(5) Pub. L. 419 (86 Stat. 675) amended Pub. L. 361 to add desertland entrymen as eligible for the same loans as indicated in (4) above.

(6) The term "Project Officer" refers to the BR Officer who may properly hold the requisite responsibility for the project or area in question.

(7) The term "authorized officer" refers to the BLM Officer to whom has been delegated the required responsibility for the area in question.

(8) The term "County Supervisor" means County Supervisor for FHA.

(9) The term "State Director" means State Director for FHA.

PART II—GENERAL PROVISIONS

A. FHA regulations will govern making and servicing FHA loans, including the taking of mortgages as additional security for existing FHA loans.

B. In connection with applications for FHA loans or credit sales to eligible applicants, the Project Officer of BR or the authorized officer of BLM, upon written request of the County Supervisor, will furnish the following:

1. Written consent to make the applicant an FHA loan or to secure an existing FHA loan.

2. Any information which BR or BLM has concerning the applicant, provided, in the case of BR information, the request has the following authorizations attached to it:

Date————————, 19—

I hereby authorize the Bureau of Reclamation to make available to the Farmers Home Administration any information the Bureau may have concerning my transactions with it. This information may be used by the Farmers Home Administration in determining my eligibility and qualifications for a loan, and is to be treated as confidential.

(Type name of applicant below signature)

signed ————————————
(applicant)

signed ————————————
(spouse)

3. A statement of account, showing the applicant's outstanding balance if there is a debt owed to BR (principal balance, accrued unpaid interest, and daily interest accrual rate, any other charges and any unpaid special distribution system costs, and the amount, delinquent).

4. A report on any development and residence requirements which have not been completed and on eligibility of the unit for water, including full information on the status of any excess land.

5. Advice as to whether the applicant is in default because of failure to pay water charges, or because of breach of any other agreements with the Bureau of Reclamation.

C. A homestead or desertland entryman on public land not in a reclamation project may apply to the County Supervisor for an FHA loan when his entry has been allowed. The original or a copy of the Notice of Allowance of Entry from BLM must be attached to the application for a loan from FHA. Upon request of the County Supervisor, the authorized officer of the BLM, to the extent applicable will furnish any information that office has with respect to the applicant entryman.

An applicant for a homestead on a reclamation project likewise may apply to the County Supervisor for an FHA loan when he has received from the BR a Certificate of Eligibility and has selected a unit. A copy of the Certificate of Eligibility must be attached to the application for a loan from the FHA unless the unit has been entered, in which case the Notice of Allowance of Entry will be attached to the application for a loan. Each application for such a loan filed by an entryman will be processed in substantially the same manner as other application of a similar character, including the preparation of the loan docket, certifications by the FHA County Committee, and approval by the duly authorized loan approving official. If any conflict exists between the development plans of FHA and BR or BLM, the difference must be reconciled prior to loan closing. A copy of the Notice of Allowance of the Entry will be required in the loan docket before a loan is closed.

D. Upon closing of a loan to an entryman, when real estate security is taken, the County Supervisor will send copies of the real estate mortgage to the authorized officer of BLM, and to BR if appropriate. The County Supervisor will indicate on the mortgage the date such instrument was filed for record and the entryman's homestead or desertland entry serial number. Copies of these instruments will serve as notification to BLM or BR that a loan has been made by FHA and may be used in connection with the servicing of such loans as indicated herein.

PART III—LOAN SERVICING

A. If the entryman-borrower repays his indebtedness in full to FHA before a patent is issued to him by BLM, the County Supervisor will promptly notify the BLM authorized officer of the release of the mortgage lien.

B. When final homestead or desertland entry proof or homestead proof and reclamation proof submitted by an entryman-borrower is accepted by the BLM and a patent is issued before BLM is notified of the full repayment of the indebtedness to FHA, the patent issued will make reference to the FHA mortgage as follows:

"This patent is issued subject to the rights of the United States under a certain mortgage or deed of trust executed by —— and ———— under date of ————, 19 ——, recorded in Book ———, Page ——— of the records of the Recorder of Deeds for ———."

In such cases, if the patent is issued to a person other than the mortgager or the purchaser at foreclosure of the mortgage, there shall also be inserted after the recital of recordation of the mortgage the following words: "Which the patentee assumes and agrees to pay."

C. Upon issuance of the patent to the entryman-borrower, the authorized officer of BLM will notify the State Director that the patent has been issued and mailed to the entryman-borrower. Upon such notification, the County Supervisor will advise the entryman-borrower to record the patent promptly in the real estate records in the county in which his unit is located and will check the records to determine that the recordation has been accomplished. The issuance of the patent will terminate any further relationship between BLM and FHA insofar as the entryman-borrower is concerned.

D. In the event that an entryman-borrower has not submitted Final Proof within the statutory period from the date of allowance of his entry, BLM will send to the County Supervisor a copy of the Notice of Expiration of the statutory period of entry when it is mailed to the entryman-borrower. The copy of the notice will be used by the County Supervisor in urging the entryman-borrower to submit final proof with appropriate explanation of his failure to do so before the expiration of the statutory period.

PART IV—DEFAULTS

When an entryman-borrower is in default in the terms of his mortgage to FHA, in complying with requirements to obtain a patent, or in meeting the requirements to make reclamation proof, the following procedures will apply:

A. *Default on Mortgage.* BLM will issue a decision canceling any entry upon which there is an FHA mortgage when so requested in writing by the State Director. FHA may request a cancellation whenever any default occurs in the terms, conditions, covenants, and obligations contained in the mortgage. Included among the terms, conditions, covenants, and obligations in the mortgage taken by FHA will be the provision that the entryman-borrower must comply with the legal and administrative regulations for the issuance of a patent and, if the entry is located in a reclamation project, with the legal and administrative regulations for making reclamation proof.

1. The State Director will furnish the authorized officer of BLM with an explanation of the need for cancellation. When the entry is located in a reclamation project, the State Director also will notify the BR Regional Director and furnish him with an explanation of the need for cancellation.

2. The BR Regional Director may request the State Director to reconsider the necessity for cancellation of the entry when (a) BR can furnish information which may not have been considered by FHA, (b) there is an outstanding contract between BR and the entryman borrower for the repayment of charges for land leveling, or (c) the entryman-borrower has not made reclamation proof. If such a request is made, a copy will be furnished to the BLM which shall suspend action on the FHA request until further notified by the FHA. Ordinarily, BR will not request a reconsideration of the necessity for cancellation unless there appears to be a reasonable basis upon which a solution can be worked out so that the entryman-borrower may retain possession of his unit.

3. If BR does not ask the State Director to reconsider his request to cancel within 30 days, BLM will issue a decision cancelling the entry.

4. If BR asks for a reconsideration of the request to cancel, it will furnish the State Director immediately new information which it believes should be considered by FHA in reaching a decision. When FHA has reached a final decision, it will notify the BLM and the BR of the decision reached. Within 30 days after receiving notice of the final decision of the State Director that the entry should be canceled, BLM will notify the entryman-borrower of the cancellation of his entry in accordance with the usual procedure. A copy of the notice of the cancellation will be mailed to the State Director at the same time.

B. *Default in Meeting Entry Requirements.* If BLM proposes to take any action toward cancellation of an entryman-borrower's entry, it will notify the State Director and the BR Regional Director if the unit is located in a reclamation project, in writing at least 30 days before any action is commenced. The notification will be accompanied by an explanation as to why cancellation will be made. Within the 30-day period either or both FHA and BR may present any new information for the consideration of the BLM in reaching a decision to, or not to, cancel the entry. When BLM has reached a final decision, it will inform the State Director and the BR Regional Director.

C. *Default in Meeting Reclamation Requirements.* In the event BR intends to recommend cancellation of an entryman-borrower's entry, the Superintendent of the Reclamation Project will notify the State Director in writing at least 30 days before such recommendation is to be submitted to BLM for cancellation. The notification will be accompanied by an explanation as to why cancellation of entry is to be requested. FHA may request a reconsideration of BR's intended recommendation to cancel within the 30-day period and will furnish any new information which it believes should be considered by BR when reaching a final decision. When BR has reached a final decision, it will notify the State Director.

PART V—DISPOSAL OF UNITS AFTER CANCELLATION OR RELINQUISHMENT

After cancellation or relinquishment of an entry upon land on which FHA holds a mortgage, such land shall be opened to re-entry only to persons eligible for an original entry, and eligible for an FHA loan unless the FHA Loan is paid in full. Any unit disposed of hereunder shall be subject to the outstanding balance owed to FHA and BR or to that portion of the outstanding balance as agreed upon by the FHA and BR or BLM, as appropriate, if the entryman is eligible for an FHA loan.

A. *One Year Limit.* Under Pub. L. 361, BLM or BR can permit a new entry only during one year after cancellation or relinquishment of the old entry where the FHA mortgage is subject to Pub. L. 361 (FO, OL and SW). In other cases such as RH and EM, the one-year limitation does not apply, but BLM or BR will nevertheless arrange for a new entry within the one-year period if it is practicable to do so.

B. *Custody and Expenses.* While BLM or BR has disposal authority it will assume custodial responsibility for the unit, but the County Supervisor and the Project Officer will determine the actions necessary to protect the interests of both FHA and BLM or BR. Any expenses incurred for protection of FHA's interest will be paid by FHA and added to the mortgage debt.

C. *Disposal of Units*—1. *Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA will make an appraisal to determine the value of the property and will report its findings to BR on appropriate FHA appraisal forms. The State Director and the BR Regional Director after receipt of the report by BR will jointly participate in determining the amount of indebtedness owed to the United States which shall be required in accordance with the existing law to be paid and the terms under which repayment will be made.

a. BR will, thereafter, for that particular unit, proceed to inform the public of the availability of the unit in accordance with its established procedures. However, before BR issues a Certificate of Eligibility to any applicant for re-entry it will submit to the County Supervisor (a) a list of the names of the applicants who can qualify for a Certificate of Eligibility and the order in which such applicants shall be considered, and (b) the information submitted by each of the qualified applicants in support of his application for the entry.

b. The County Supervisor and the County Committee will examine the list and the information to determine which of the applicants are eligible for an FHA loan. The list of any documentary information furnished will be returned to BR with a written statement setting forth the names in the list which are eligible for FHA assistance. Upon receiving such information from FHA, BR will proceed to select, in accordance with established procedures, from among the applicants determined to be eligible for a Certificate of Eligibility and an FHA loan, one applicant but not to exceed two alternate applicants, to whom the unit may be awarded upon qualifying to assume the indebtedness.

c. BR will issue a Certificate of Eligibility to the selected applicant. The Certificate of Eligibility will be sent to the FHA County Supervisor who will instruct the applicant to file his Certificate of Eligibility and application for entry with BLM which will issue a Notice of Allowance of Entry if the applicant is qualified to make entry. The aplicant will be allowed to occupy the unit hen he has received the Notice of Allownce of Entry and has completed arrangenents to assume the required amount of inebtedness owed to FHA or to refinance uch indebtedness. FHA will send a copy of he assumption agreement or note and ortgage, if any, executed by the new occuant to BR and BLM.

d. FHA may permit an eligible person to hom the unit is awarded to assume that rt of the indebtedness determined to be thin the value of the property.

2. *Units Not Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA will make an appraisal to determine the value of the property and to determine the amount of indebtedness owed on FHA loans that is to be paid by the new entryman. The FHA will report the amount of the FHA debt to be assumed to the BLM.

a. The BLM will, thereafter, for that particular entry, proceed to inform the public of the availability of the land in accordance with its established procedures. BLM will, following the opening of the land to application, submit to the County Supervisor (a) a list of the names of the applicants who can qualify for the allowance and the order in which such applicants shall be considered, and (b) the information submitted by each of the applicants in support of his application.

b. Thereafter the FHA will select from the list the first applicant for the entry who can qualify for an FHA loan.

c. FHA will then notify BLM of the applicant selected. The authorized Officer will, as soon as possible after notification, issue the Notice of Allowance. The Allowance of Entry or an attachment thereto will show that entry is conditioned upon payment or assumption of the FHA debt. A copy of appropriate notice will be mailed to the State Director.

d. Upon receipt of the Notice of Allowance of Entry by the applicant, FHA will instruct him to occupy the unit and will complete arrangements for him to assume or refinance the indebtedness or the part thereof determined to be within the value of the property. FHA will send a copy of the assumption agreement or note and the mortgage, if any, executed by the new occupant to BLM.

e. FHA may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

D. *Disposal of Units By Farmers Home Administration.* 1. If no entry is allowed within one year after cancellation or relinquishment of a prior entry on which FHA holds a mortgage and the property was security for an FHA loan subject to Pub. L. 361 even though it also was security for a loan not subject to that law, FHA will dispose of the unit in accordance with the FHA regulations. If the unit is located on a reclamation project, such disposition shall be subject, however, to outstanding reclamation charges on the land due the United States.

2. If the property cannot be sold immediately, the FHA will arrange for a lease or caretaker agreement as necessary to protect the Government's interests.

3. When FHA prepares to sell a unit, it will also advise BLM or BR, as appropriate,

of the name of the purchaser and will request issuance of a patent to the purchaser. If the unit is in a reclamation project, BR will furnish, as soon as possible to FHA, information concerning any outstanding reclamation charges on the land due the United States.

4. The sale may be for cash or on credit. In the event the sale is on credit, FHA will furnish a copy of the mortgage to BLM or BR, as appropriate, which shall make reference, in any patent issued thereafter, to the outstanding mortgage of FHA.

This memorandum of understanding supersedes the earlier memorandum of understanding signed on February 17, 1950, and March 25, 1950, respectively, by the Secretaries of Agriculture and Interior.

Approved:

Jack O. Horton,
Assistant Secretary of the Interior.

Date: October 22, 1974.

Approved:

William Erwin,
Assistant Secretary of Agriculture.

Date: December 16, 1974.

[43 FR 55895, Nov. 29, 1978, as amended at 51 FR 4136, Feb. 3, 1986; 52 FR 8035, Mar. 13, 1987]

Exhibit B—Target Participation Rates for Farmers Home Administration (FmHA) Direct Farm Ownership (FO) Loan and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups.

I. *GENERAL:* Provisions of the Agricultural Credit Act of 1987 require Farmers Home Administration (FmHA) to establish target participation rates for providing direct Farm Ownership (FO) loan funds and acquired farmland assistance to members of socially disadvantaged groups. These rates are established to ensure that members of socially disadvantaged groups are provided access to direct FO loan funds and acquired farmland. The target participation rate established for each State, and each County within the State, is based on the proportion of minority rural population to the total rural population in the State, and for each County within the State.

II. *IMPLEMENTATION RESPONSIBILITIES:* States will meet their target participation rates in use of direct FO loan funds and the sale of inventory property.

A. The target participation rate, as provided in this Exhibit, will be applied to direct Farm Ownership loan funds and inventory property in the following manner:

1. The targeted portion of a State's Fiscal Year direct farm ownership allocation, as outlined in Exhibit A of Subpart L of Part 1940 of this chapter, will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation be insufficient. This requirement does not prohibit States from using their allocation of regular direct FO funds for making loans to members of socially disadvantaged groups.

2. *Inventory property.* States will ensure that members of socially disadvantaged groups have an opportunity to purchase, as a minimum, the number of inventory farms available October 1 of each year x a State's target participation rate. Sales of suitable inventory farmland will be handled in accordance with the applicable provisions of Subpart C of Part 1955 of this chapter. Leasing of inventory property will be handled in accordance with the applicable provisions of Subpart B of Part 1955 of this chapter.

III. *OTHER INFORMATION:* The National Office will provide each State Director with a list of the target participation rates for each county by October 1 of each year. State Directors shall make available to each County and District Office the county(ies) target participation rates. State Directors will make every effort to provide the greater amount of direct FO loan funds and inventory farmland to counties having the larger socially disadvantaged population.

TOTAL U.S. PARTICIPATION RATE

State	Target participation rate (percent)
Alabama	21
Alaska	34
Arizona	39
Arkansas	13
California	20
Colorado	11
Connecticut	3
Delaware	17
Florida	14
Georgia	20
Hawaii	68
Idaho	6
Illinois	2
Indiana	1
Iowa	1
Kansas	3
Kentucky	3
Louisiana	25
Maine	1
Maryland	14
Massachusetts	2
Michigan	3
Minnesota	2
Mississippi	37
Missouri	2
Montana	8
Nebraska	2
Nevada	12
New Hampshire	1
New Jersey	8
New Mexico	57
New York	3
North Carolina	21
North Dakota	5
Ohio	2
Oklahoma	12
Oregon	5
Pennsylvania	2
Rhode Island	2
South Carolina	34
South Dakota	9
Tennessee	6
Texas	22
Utah	7
Vermont	1
Virginia	2
Washington	7
West Virginia	3
Wisconsin	2
Wyoming	7
U.S. Total	10

[53 FR 35692, Sept. 15, 1988]

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35706, Sept. 15, 1988, unless otherwise noted.

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physicial/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of this Part for making SW loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter (available in any FmHA office) for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA.

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interest, in accordance with Subpart B of Part 1924 of this chapter.

§ 1943.54 Definitions.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantitites so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physicially separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for the applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Indefinite parole. To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I-94, "Immigration on Indefinite Parole" card.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Leasehold. A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA.

(c) Property and interest in property owned and income received by an individual applicant; and cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and it partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

§§ 1943.57—1943.60 [Reserved]

§ 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1943.62 Soil and Water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Public Law 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTER-AGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar proposes and periods of time.

(6) Be the owner or operator of a farm after the loan is closed.

(7) If a tenant, has a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) A cooperative, corporation, partnership or joint operation must:

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators, Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(2) Honestly try to carry out the conditions and terms of the loan. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 143.54 of this subpart for the definition of "United States"), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(4) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar proposes and periods of time.

(6) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(7) Be the owner or operator of the farm after the loan is made.

(8) If a tenant, has a satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(9) Consist of members, stockholders, partners, or joint operators, who are *individuals* and not

corporation(s), partnership(s), cooperative(s) or joint operation(s).

§§ 1943.63—1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation, such as:

(1) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(2) Drainage of land which is part of an operating farm unit.

(3) Land clearing.

(4) Sodding, subsoiling, land leveling, liming and fencing.

(5) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(6) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(7) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(8) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(9) Purchase or repair of special-purpose equipment, such as terracing, land leveling and ditching equipment, provided:

(i) Such equipment is needed and will facilitate the completion of maintenance of the planned improvement, and

(ii) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(10) Pay the cost of construction of alcohol and methane gas facilities along with essential equipment.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures, if necessary, to comply with such pollution abatement requirements.

(c) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(1) The purchase of water stock or membership in an incorporated water users association.

(2) The acquisition of a water right through appropriation, agreement, permit, or decree.

(3) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(i) The value of the land without the water supply or right is only an incidental part of the title price, and

(ii) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(d) Refinance debts subject to the following:

(1) The debts were incurred for authorized SW loan purposes.

(2) All development or repair work conforms to FmHA standards or those standards will be met with the SW loan.

(3) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(4) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(e) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(f) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service or the Soil Conservation Service only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the Farmers Home Administration (FmHA).

(g) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(h) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(1) Such a loan may be made on land with defective title owned by the applicant (see §1943.69 (b)) or on land in which the applicant owns an undivided interest providing:

(i) The amount of funds used on such land is limited to $25,000,

(ii) There is adequate security for the loan, and

(iii) The tract is not included in the appraisal report.

(2) Such a loan may be made on land leased by the applicant providing:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life,

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated, and

(iii) There is adequate security for the loan.

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public records between tracts.

(b) The limitation found in § 1943.79 (c) of this subpart is exceeded.

(c) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Refer to FmHA Instruction 2000-LL of this chapter, "Memorandum of Understanding Between FmHA and U.S. Fish and Wildlife Service," for assistance in implementation.

§1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

§1943.69 Security

(a) *General.* Each SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines that the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(iv) An SW loan is made just to finance construction of an alcohol or methane gas facility, a lien will be taken on the facility and sufficient other property to adequately secure the loan, even though a majority of the products are used on the farm. In these situations, a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(4) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the county records that the applicant can give mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When se-

curity is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need by required if the stock represents the right to receive water and is transferrable separately from the land, provided:

(i) There is a market for the stock.

(ii) The purchase price is no greater than the price at which stock in the water company is normally sold.

(6) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(7) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1962 and Subpart B of Part 1941 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights of way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to serv-

ice the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferees who will assume the SW debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if ligation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of ____ years beginning on ____, 19__, created and established by a certain Lease dated ________, 19__ executed by ________ as lessor(s), recorded on ____, 19__, in Book ____, page ____ of the __ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(f) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(g) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.70—1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements. Refer to Subpart LL of Part 2000 of this chapter (available in any FmHA office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must also provide evidence that they have received an ATF operating permit.

§1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this Chapter (FmHA) Instruction 426.1) when the loan is secured by real estate.

(2) See §1943.73 (a) of this subpart for information about mudslide and flood insurance.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

§ 1943.75 Options, planning, and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA 440-34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon FmHA making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee or contractor authorized to make farm appraisals when real estate is taken as security. The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least *one* of the following qualifications:

(i) Certification by a national or State appraisal society.

(ii) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for a certification in a national or State appraisal society.

(iii) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

(3) The value of stock required to be purchased by Federal land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An assignment is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security, the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1924, Subpart A of this chapter.

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for

FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.78 [Reserved]

§ 1943.79 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured SW loans may be made simultaneously with other FmHA loans or to borrowers presently in debt on FmHA loans, only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an SW loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any FO, RL, OL and SW loans will not exceed $650,000.

(c) An insured SW loan may be made to a borrower with an outstanding guaranteed FO, SW of RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed $300,000 at loan closing.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) All other requirements of the loan are met.

(d) A borrower may use the same collateral to secure two or more loans made, insured or gauranteed under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440-2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.81 [Reserved]

§ 1943.82 Loan docket processing.

(a) *Forms.* FmHA forms are available in any FmHA Office. The following table is a guide to the forms needed and shows how they are distributed.

FmHA form No.	Name of form	Total No. copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement	2	-0	1-0	1-C
400-3	Notice to Contractors and Applicants	3		1-C	1-C
400-4	Assurance Agreement	2	2-O&C	1-0	1-C
400-6	Compliance Statement	3		1-0	1-C
[1] 403-1	Debt Adjustment Agreement	3(5)	1-0	1-0	1-C
410-1	Application for FmHA Services	1(7)	1-0	1-0	1-C
410-9	Statement Required by the Privacy Act	2	2-O&C	1-C	1-O
410-10	Privacy Act Statement to References	2(8)			1-C
[1] 422-1	Appraisal Report Farm Tract	1		1-O	
1910-11	Applicant certification Federal Collection policies for consumer or commercial debts	2	1-02C	1-0	1-C
[1] 422-2	Supplemental Report Irrigation, Drainage, Levee, and Minerals	1		1-0	
[1] 1924-1	Development Plan	2(3)	1-0	1-0	1-C
[1] 427-8	Agreement with Prior Lienholder	3(6)		1-0	1-C
[1] 431-1	Long-Time Farm and Home Plan	2	2-O&C	1-C	1-0
[1] 431-2	Farm and Home Plan	2(2)	1-0	1-0	1-C
[1] 431-4	Business Analysis Nonagricultural Enterprise	2	1-0	1-C	1-0
1940-1	Request for Obligation of Funds	4(4)	2-O&C(7)	3-O&2C	1-0
440-2	County Committee Certification or Recommendation	1		1-0	
[1] 440-9	Supplementary Payment Agreement	2	1-0	1-0	1-C
[1] 440-21	Appraisal of Chattel Property	1		1-0	
[1] 440-32	Request for Statement of Debts and Collateral	2	1		
[1] 440-34	Option to Purchase Real Property	3(1)	2-O&C	1-O	1-C
440-45	Nondiscrimination Certificate (Individual Housing)	2	1-O	1-O	1-C
1940-21	Environmental Review	1		1-O	
1940-22 or Exhibit H, Subpart G, Part 1940.					
[2] 443-12	Farm Ownership and Individual Soil and Water Fund Analysis	3		1-C	
[1] 443-17	Agreement to Sell Nonessential Real Estate	2	2-O&C	1	1-C
[1] 1940-20	Request for Environmental Information	2	1-0		
[1] 1922-11	Appraisal for Mineral Rights	1		1-0	

0—Original; C—Copy.

[1] When applicable.

[2] Not used when a credit sale is processed without a loan.

Notes to Table

(1) Signed copy of option previously delivered to the seller.

(2) In addition to the plan for the first full crop year, the Interim Plan, if prepared, will be included in the docket.

(3) When the Contract Method is used, three copies of plans and specifications will be required.

(4) Signed copy to applicant. An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.

(5) Signed copy to creditor.

(6) Copy to lienholder.

(7) Applicant must sign and date this form.

(8) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans; nonfarm enterprises; and copies of mortgages, contracts, and deeds.

(c) *Verification of veteran's preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

[53 FR 35706, Sept. 15, 1988, as amended at 54 FR 28019, July 5, 1989; 54 FR 29331, July 12, 1989, 54 FR 47959, Nov. 20, 1989; 55 FR 21530, May 25, 1990]

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible;

(ii) The County Committee certification has been properly completed and signed by a least two members of the Committee;

(iii) Funds are requested for authorized purposes;

(iv) The proposed loan is based upon a feasible plan. Planning forms other than Form FmHA 432-2, "Farm and Home Plan" may be used when they provide the necessary information.

(v) The security is adequate;

(vi) Necessary supervision is planned; and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements; and

(iii) Indicate special conditions or agreements needed with prior lienholders, when appropriate; or

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approval official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

[53 FR 35706, Sept. 15, 1988, as amended at 55 FR 21530, May 25, 1990]

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done. If an option is involved, the applicant will sign and send to the seller Form FmHA 440-35, "Acceptance of Option," or other suitable forms.

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, (available in any FmHA office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

(2) Interested parties will be notified of the cancellation as provided in Part

1807 of this chapter (FmHA Instruction 427.1)

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 194-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

[53 FR 35706, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989]

§§ 1943.86—1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in paragraph § 1943.69(b)(5) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440-25, "Financing Statement," or, when authorized, Form FmHA 440-A25, "Financing Statement."

(3) State forms may be used if National forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 1905-1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA Loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Cooperatives or corporations.* The appropriate authorized officers will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in a partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the County Office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4, "Transmittal of Documents," will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§§ 1943.89—1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A of this subpart, "Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration, Department of Agriculture," for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) Subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.95—1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT TO SUBPART B

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

Whereas, under section 8 of the 1977 Drought Emergency Act (P.L. 95-18), hereafter referred to as "the Act," the Bureau of Reclamation (BR) is authorized to make loans to irrigators for the purpose of undertaking construction, management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from the 1976-1977 drought period;

Whereas, the Farmers Home Administration (FmHA) has an existing soil and water program (SW) authorized by section 304 of the Consolidated Farm and Rural Development Act for loans to individuals that accomplish purposes similar to those in the Act;

Whereas, it is more efficient and in the best interests of the United States, and in accordance with section 6 of the Act, for BR to procure the services of FmHA pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by the Act.

Now therefore the parties agree:

1. For purposes of this Memorandum the term "irrigators" shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within the Federal reclamation projects. Federal reclamation projects means any project constructed or funded under Federal reclamation law and specifically including projects having approved loans under the Small Reclamation Projects Act of 1956, as amended.

2. FmHA shall make and service loans to individual irrigators as authorized by the Act pursuant to its SW program and applicable FmHA regulations except as modified hereby.

3. The loans shall be only for the purposes relating specifically to irrigation and set forth in FmHA Instruction 443.2, IVA1, A8, B1, B2, and C. The loans shall be interest free. Loans for water acquisition and transportation shall be repaid over a period not to exceed 5 years. Other loans shall be repaid over a period not to exceed 5 years except such loans which generate benefits which are usable beyond 1977 shall be repaid within a period which shall be the shorter of the estimated useful life of the facilities or the reasonable payment capacity of the irrigator but in no event to exceed 40 years. All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977.

4. Services rendered by FmHA pursuant to this Memorandum of Understanding shall be on a nonreimbursable basis to the irrigator. For services rendered, BR shall pay to FmHA a charge of 5 percent of principal of each loan. BR directs that FmHA disburse such service charge to itself directly upon the closing of each loan.

5. Three million dollars shall be transferred to FmHA by Standard Form 1151, which amount shall be available for construction, management, and conservation activities. An additional sum of $5 million may be made available upon request of FmHA for the acquisition and transportation of water.

6. *Monthly Report:* FmHA shall submit a Standard Form 133, "Report on Budget Execution", in accordance with OMB Circular A-34, to the Bureau of Reclamation, Washington, D.C. 20240, attention code 370.

7. *Accomplishment:* FmHA shall submit to the Bureau of Reclamation, Washington, D.C. 20240, attention code 400, a complete report on expenditures and accomplishments under this Memorandum on January 16, 1978.

Date of June 29, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Dated: July 15, 1977.

Farmers Home Administration, Department of Agriculture,

MARTY HOLLERAN,
for Gordon Cavanaugh,
Administrator.

ATTACHMENT

AMENDATORY-MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

WHEREAS, the Bureau of Reclamation (BR) and the Farmers Home Administration (FmHA) consummated a Memorandum of Understanding on July 15, 1977, whereby BR would procure the services of FmHA pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by section 8 of the 1977 Drought Emergency Act (Pub. L. 95-18); and

WHEREAS, item 3 of that Memorandum of Understanding provides in part that all loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977; and

WHEREAS, Pub. L. 95-107, enacted on August 17, 1977, amends Pub. L. 95-18 to accomplish, among other things, an extension of the time for completing construction activities under the authorities of Pub. L. 95-18 from November 30, 1977, to January 31, 1978.

NOW THEREFORE the parties agree that the date November 30, 1977, in the last sentence of item 3 of the Memorandum of Understanding executed by BR on June 29, 1977, and FmHA on July 15 1977, be revised to January 31, 1978, so that the sentence will read, "All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by January 31, 1978."

Date of September 6, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Farmers Home Administration, Department of Agriculture,

GORDON CAVANAUGH,
Administator.

SEPTEMBER 7, 1977.

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AUTHORITY: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

SOURCE: 48 FR 200, Jan. 4, 1983, unless otherwise noted.

§ 1944.1 General.

This subpart sets forth the policies and procedures and delegates authority for making section 502 Rural Housing (RH) loans to individuals under Title V of the Housing Act of 1949, as amended. The objective of section 502 loans is to provide eligible persons who will live in rural areas an opportunity to obtain adequate but modest, decent, safe, and sanitary dwellings and related facilities. The requirements of Subpart E of Part 1901 will be applied as appropriate. Loans and services provided under this subpart shall not be denied to any person or applicant based on race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act.

§ 1944.2 Definitions.

The following definitions apply to this subpart:

(a) *Cosigner.* A party who joins in the execution of a promissory note to guarantee its repayment by the borrower. The cosigner becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(b) *County Supervisor.* Includes Assistant County Supervisor for all duties and responsibilities which are included in the employee's job description and for authorizations which have been delegated in writing in accordance with FmHA Instruction 2006-F (available in any FmHA office). For the areas of Alaska and Western Pacific Territories it also includes the Area Supervisor.

(c) *Disabled person.* A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Form FmHA 1944-4, "Certification of Disability or Handicap," will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living,

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(d) *Elderly family.* An elderly family consists of one of the following:

(1) A person who is the head, spouse or sole member of a family and who is 62 years of age or older, or who is handicapped or disabled and is the applicant/borrower or the co-applicant/co-borrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled or handicapped persons who are living together, at least one of whom is the applicant/borrower or co-applicant/co-borrower; or

(3) In the case of a family where the borrower/co-borrower, or spouse, was at least 62 years old, handicapped, or disabled, the surviving household member(s) shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving member or members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his or her death; and

(ii) If one of the surviving family members is the spouse of the deceased family member the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member the dwelling was financed under Title V of the Housing Act of 1949.

(e) *Existing dwellings.* A dwelling which is:

(1) More than 1 year old; or

(2) Previously occupied as a residence.

(f) *Extended family.* A double family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is: parents living with their adult children.

(g) *Farm.* Includes the total acreage of one or more tracts of land which:

(1) Is owned by the applicant,

(2) Is operated as a single unit,

(3) Is in agricultural production, and

(4) Annually will produce agricultural commodities for sale and home use with a gross value of at least $400 based on 1944 prices. To aid in estimating the gross annual value of agricultural commodities produced on a particular farm, a State Supplement will be issued listing the 1944 prices for the principal farm commodities in the State.

(h) *Full-time student.* A person who is carrying a subject load that is considered full-time for day students (excluding correspondence courses) under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

(i) *Handicapped person.* A person having a physical or mental impairment which:

(1) Is expected to be of long or indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. Form FmHA 1944-4 will be used to verify handicap in cases where State Review Board or Social Security records are not available.

(j) *Household or family.* The applicant, co-applicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months (excluding foster children and live-in aides).

(k) *Income*—(1) *Very low income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by the Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is or will be located. Maximum very low-income limits are set forth in Exhibit C of this subpart (available in any FmHA office).

(2) *Low income.* An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by HUD for the county or MSA where the property is or will be located. Maximum lower-income limits are set forth in Exhibit C of this subpart (available in any FmHA office).

(3) *Moderate income.* An adjusted annual income that does not exceed the maximum limit for moderate-income households as provided in Exhibit C of this subpart (available in any FmHA office).

(4) *Above-moderate income.* An adjusted annual income that exceeds the maximum limit for moderate-income households as provided in Exhibit C of this subpart (available in any FmHA office).

(l) *Metropolitan Statistical Area.* MSAs are defined according to a set of detailed standards prepared by the Federal Committee on MSAs. An area qualifies as an MSA if it contains a city of at least 50,000 population or an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000. MSAs are defined in terms of entire counties, except in the six New England states where they are defined in terms of cities and towns. An MSA may also include additional counties having strong economic and social ties of the central county. The term Standard Metropolitan Statistical Area (SMSA) was in use prior to the June 30, 1983, effective date of the MSA terminology.

(m) *Minor.* Persons under 18 years of age. Neither the head of household nor spouse may be counted as a minor. Foster children are not counted as minors for determining annual or adjusted annual income.

(n) *Net family assets.* Include:

(1) The value of equity in real property, savings, demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but *exclude:*

(i) Interests in Indian trust land,

(ii) The value of dwelling and a minimum adequate dwelling site,

(iii) Cash on hand which will be used to reduce the amount of the loan,

(iv) The value of necessary items of personal property such as furniture and automobile(s) and the debts against them,

(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in foreclosure or bankruptcy sale) during the two years preceding the date of application, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measureable in dollar terms.

(o) *Nonfarm tract.* A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18(b)(10) of this subpart.

(p) *Place.* An area containing a concentration of inhabitants within a determinable unincorporated area.

(q) *Rehabilitation.* Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

(r) *Senior citizen.* A "senior citizen" is a person who is 62 years of age or older.

(s) *Town.* A "town" means a municipality similar to a city but not a New England-type town which resembles a township or county in most States.

(t) *Urban area.* Either a town, village, city, place, or any associated combination thereof which, with the immediately adjacent densely settled areas, has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii) of this subpart.

[50 FR 39961, Oct. 1, 1985 and 51 FR 6393, Feb. 24, 1986, as amended at 52 FR 11982, Apr. 14, 1987]

§ 1944.3 Loan purposes.

(a) A loan may be made to an eligible applicant for the following purposes:

(1) To buy, build, rehabilitate, improve or relocate a dwelling and provide related facilities for use by the applicant as a permanent residence.

(2) To buy, build, rehabilitate, improve or relocate a dwelling, and provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers or farm laborers.

(3) To refinance secured debts or unsecured debts as provided in § 1944.22, except for manufactured homes.

(b) A loan made under paragraph (a) (1) or (2) of this section may be used to:

(1) Purchase, in fee title, a minimum adequate site, as outlined in § 1944.11(c) on which the improvements are or will be located, if the applicant does not own an adequate site.

(2) Pay reasonable acquisition cost for a leasehold interest in a minimum adequate site at the time of making the initial RH loan.

(3) Provide an adequate and safe water supply and/or an adequate sewage disposal facility.

(4) Provide site preparation, including grading, foundation plantings, seeding or sodding of lawns, trees, walks, yard fences and driveways to building sites.

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer or clothes dryer, if these items are normally sold with dwellings in the area and if purchase of these items is not the primary purpose of the loan.

(6) Provide special design features or equipment when necessary because of physical handicap or disability of the applicant or a member of the household.

(7) Purchase and install approved energy saving measures and approved furnaces and space heaters which use a type of fuel that is commonly used, and is economical and dependably available.

(8) Provide storm cellars, and similar protective structures.

(9) Pay incidental expenses such as fees for tax monitoring service, legal, title clearance, loan closing, architectural, surveying, environmental and other technical services and incidental expenses authorized in Exhibit F of this subpart.

(10) Pay reasonable connection fees for utilities such as water, sewer, electricity or gas, which are required to be paid by the borrower and which cannot be paid from other funds.

(11) Pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned improvements.

(12) Pay real estate taxes which are due and payable on the building and/or site at the time of closing on an initial loan, if this amount is not a substantial part of the loan.

(13) Establish escrow accounts for the payment of real estate taxes or property insurance premiums in those States where the use of escrow accounts is authorized by the National Office.

(14) Provide living area for all members of the applicant's household, including "extended family," as provided in § 1944.16(a)(6).

[48 FR 200, Jan. 4, 1983, as amended at 49 FR 40793, Oct. 18, 1984; 51 FR 41607, Nov. 18, 1986; 53 FR 36267, Sept. 19, 1988]

§ 1944.4 Loan restrictions.

(a) A loan will not be made to an applicant who, within the previous 2 years, had a section 502 RH loan but disposed of the property through sale or transfer unless:

(1) The dwelling sold or transferred was inadequate to meet the applicant's housing needs; or

(2) The applicant was compelled to relocate due to change of employment or health reasons and the property the applicant proposes to buy is in a different trade/market/employment area; or

(3) The housing need is due to a legal separation or divorce.

(b) Loan funds may not be used to:

(1) Buy or improve income-producing land, or buildings to be used for income-producing purposes or buildings not essential for RH purposes.

(2) Pay fees, charges or commissions such as finders' fees, fees for packaging the application or placement fees for the referral of prospective applicants to FmHA.

(c) A loan will not be made to an applicant whose previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart B of Part 1956 of this chapter or by release from personal liability under Subpart A of Part 1955 of this chapter as reflected by the County Office records, or where settlement under such regulation is contemplated, unless failure to pay the indebtedness was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, or than weather hazards, disasters, or price fluctuations, have been removed or will be removed by making the loan. Before approving the property or causing such an applicant to incur any expense in connection with the loan the County Supervisor will complete Form FmHA 431-2, "Farm and Home Plan," or Form FmHA "1944-3, Budget and/or Financial Statement."

and send it with the application, any available case folders, and recommendations to the State Office for a determination as to whether to proceed with the development of the loan docket.

(d) A loan will not be made to an applicant who has demonstrated his or her inability to carry out the required obligations of the loan, as evidenced by recent failure to maintain rental property or a former home and premises in a habitable and responsible manner, has performed unauthorized conversion or alterations of the structure, or created public nuisances in or around a former residence, unless the reasons have been removed and are not likely to recur. Evidence of such inability must be specifically addressed in the letter of rejection and documented in the case file running record, and may never be due to presumed inability based on age, sex, marital status, or any other prohibited basis under the Equal Credit Opportunity Act (ECOA).

(e) Loans will not be made to a homestead entryman or desert entryman to improve the entry prior to receipt of patent.

[48 FR 200, Jan. 4, 1983, as amended at 51 FR 45432, Dec. 18, 1986; 53 FR 17688, May 18, 1988]

§ 1944.5 Annual income.

Income will be determined as follows and thoroughly documented in the case file running record:

(a) Current verified income either part-time or full-time received by the applicant and all adult members of the household including the spouse is derived by multiplying:

(1) An hourly wage by 2080 hours (for part-time employment use anticipated annual hours); or

(2) A weekly wage by 52 weeks; or

(3) A biweekly wage by 26 weeks; or

(4) A monthly wage by 12 months.

(b) If the spouse or any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person(s) involved sign a statement that the person(s) is not presently employed and does not intend to resume employment in the foreseeable future, or if interest credit is involved, during the term of the Interest Credit Agreement. The statement will be filed in the applicant/borrower's case file.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation will be computed as the estimated annual amount of such income for the ensuing 12 months. Historical data based on the past 12 months may be used if a determination of expected income cannot logically be made.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by Internal Revenue Service (IRS) regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "0" in determining annual income.

(iii) A deduction based on straight line depreciation is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescene of depreciable property used in the operation of a trade, farm or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation actually claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1944.2(n) of this subpart, in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by the County Supervisor.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regularly recurring cash contributions or gifts received from persons not residing in the dwelling.

(8) Any earned income tax credit to the extent it exceeds income tax liability.

(9) Any amount of educational grants or scholarships or Veteran's Administration benefits available for subsistence after deducting expenses for tuition, fees, books and equipment.

(10) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or spouse, whether or not that family member lives in the unit.

(11) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 6 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following *are not* included in annual income but will be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse may never be considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard, or worker's compensation policies, and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or veteran's payments, which are not used for above purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Payments to volunteers under the Domestic Volunteer Service Act of 1973, including but not limited to:

(i) National Volunteer Antipoverty Programs which include VISTA, Peace Corps, Service Learning Program and Special Volunteer Programs.

(ii) National Older American Volunteer Programs for persons age 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).

(10) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(11) Payments received under the Alaska Native Claims Settlement Act.

(12) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

(13) Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

(14) Payments received from the Job Training Partnership Act.

(15) Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

(16) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

(17) Any funds, other than those listed in paragraph (e) of this section, which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

[50 FR 39962, Oct. 1, 1985 and 51 FR 6393, Feb. 24, 1986]

§ 1944.6 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1944.5 of this subpart less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or co-applicant, who is:

(1) Under 18 years of age; or

(2) Eighteen years of age or older and is disabled or handicapped as defined in § 1944.2 (c) and (i) of this subpart; or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1944.2(d) of this subpart.

(c) A deduction for the care of minors 12 years of age or under to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family as defined in § 1944.2(d) of this subpart. This includes medical expenses the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(2) Reasonable attendant care and auxiliary apparatus expenses for each handicapped/disabled member of *any* household to the extent necessary to enable any member of such household (including such handicapped/disabled member) to be employed.

[50 FR 39963, Oct. 1, 1985 and 51 FR 6393, Feb. 24, 1986]

§ 1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) An applicant is eligible for a Section 502 loan only if the following requirements are met:

(1) The adjusted annual income as defined in § 1944.6 of this subpart at the time of loan approval does not exceed the applicable income limit in

Exhibit C of this subpart (available in any FmHA office).

(2) Repayment ability as provided in § 1944.26(f), is demonstrated in the following manner:

(i) The applicant has adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income and/or the history of the typical annual income of others in the area with similar types of employment. Such income should be sufficient to meet living expenses, pay taxes, insurance and maintenance costs, and to make required payments on all obligations including the Section 502 loan; or

(ii) The applicant obtains a cosigner with dependably available income which will be sufficient to repay the loan. The cosigner must be an individual but may not be a member of the applicant's household.

(b) Applicants applying who do not meet the requirements of paragraph (a)(2) of this section will be considered ineligible unless another adult(s) in the household has adequate income and wishes to join in the application as a co-applicant. The combined incomes then may be considered in determining repayment ability.

[48 FR 200, Jan. 4, 1983, as amended at 50 FR 39963, Oct. 1, 1985; 51 FR 6393, Feb. 24, 1986]

§ 1944.9 Other eligibility requirements.

In addition to the income eligibility requirements of § 1944.8, the applicant must:

(a) Qualify as one of the following:

(1) A person who does not own a dwelling, or owns a dwelling which is not structurally sound, functionally adequate, or large enough to accommodate the needs of the applicant, or

(2) A farmowner without decent, safe and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere either individually or jointly with the applicant.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, or the Trust Territory of the Western Pacific Islands, or a noncitizen who resides in one of the foregoing areas after being legally admitted for permanent residence or on indefinite parole. Permanent residents will verify their status by presentation of Form I-151 or Form I-551, "Alien Registration Receipt Card," or any later revision of the form. Those on indefinite parole must present Form I-94, "Arrival/Departure Card," or any later revision of the form. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records" (obtainable from the nearest INS District. See Exhibit B of this subpart), and mailing the form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(d) Possess legal capacity to incur the loan obligation, and have reached the legal age of majority in the State, or have had the disability of minority removed by court action.

(e) have the potential ability to personally occupy the home on a permanent basis, if the loan is to provide housing for the applicant's own use. To illustrate, because of the probability of their being transferred or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge, and

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation or discharge, and

(3) An adult member of the household will be available to make inspections if the home is being constructed and to sign checks for work performed.

(f) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due. The following *will not* indicate an unacceptable credit history:

(1) "No history" of credit transactions by the applicant.

(2) Bankruptcies, foreclosures, satisfied judgments, or delinquent payment records which occurred more than 36 months before the application if no recent similar situations have occurred.

(3) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature, were beyond the applicant's control and have been removed. Examples: loss of job; delay or reduction in government benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

[48 FR 200, Jan. 4, 1983, as amended at 48 FR 54809, Dec. 7, 1983]

§ 1944.10 Rural area designation.

(a) For the purpose of this subpart, a rural area is:

(1) Open country which is not part of or associated with an urban area.

(2) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) Has a population not in excess of 10,000 if it is rural in character, or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, and

(A) Is not contained within an MSA, and

(B) Has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development.

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces. Open spaces include undeveloped, agricultural, or sparsely settled areas. Other spaces such as physical barriers (e.g., rivers, canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, recognized open spaces for which the existence of plans for development in the near future (3 to 5 years) is known, and similar nonresidential areas, are not considered open spaces for the purpose of this program.

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each will be considered separately if they are not otherwise associated with each other, and their densely populated areas are not contiguous, as determined after consideration of paragraphs (a) and (b) of this section.

(d) Population count in any area will be taken from the decennial U.S. Census of Population, national population updates published by the Bureau of the Census, any special population census conducted by the Bureau of the Census, and the following:

(1) Significant new development on the periphery of ineligible areas which require change in boundaries.

(2) Redesignation of corporate limits by local authorities which affect the eligibility status of an area.

(e) In determining population count for area eligibility, consideration must also be given to developed areas in counties or states which are contiguous to and, therefore, a part of developed areas in other counties or states. This determination must be made in agreement between the State Directors concerned.

(f) In order to ensure that the rural housing program is limited to eligible rural areas, the County Supervisor, in consultation with the District Director, will conduct a review of all areas under his/her jurisdiction every 5 years. The first 5-year revision must have been completed by FY-86. More frequent reviews may be conducted as needed. The following criteria will apply:

(1) The review will be based on the considerations set forth in paragraphs (a) through (e) of this section and may be facilitated by the use of recent maps and aerial photographs. A report on the review with recommendations will be signed by the County Supervisor and the District Director and submitted to the State Director on or before February 28 of the review year.

(2) Based on the recommended changes provided by the County Supervisor and the District Director, the State Director will:

(i) Make the public aware that a study will be conducted for those areas that may change from rural to nonrural. The State Director should, where the State Director determines it practicable, publish in local newspapers, pre-notices of the review actions for the information of interested parties, at least 180 days prior to final determination. It can be anticipated that the study may take 6 months before a decision will be made.

(ii) If the study shows that an area is not rural, limit the rural housing program in that area after the date of the decision, to the loan purposes prescribed in paragraph (i) of this section.

(iii) Request authorization from the National Office (Attention: Chief Homeownership Branch, SFH/PD) for changes, if the study shows new areas exceeding 10,000 but not exceeding 20,000 [as defined in paragraph (a)(2)(ii) of this section] that will be identified as eligible rural areas.

(iv) Upon completion of the study, and prior to September 30 of the review year, update, establish, and issue by State Supplement, lists and maps of all *ineligible areas* under his/her jurisdiction.

(g) In addition to the review of eligible areas prescribed by this section, the State Director is responsible for the implementation of changes in all areas under his/her jurisdiction resulting from the decennial Census of Population (including biannual updates, if available). The State Director will take immediate action on these changes after receipt of the information from the Bureau of the Census through FmHA. These changes and other immediate changes for cause directed by the Administrator must be implemented without delay, since advance notice to the public in such situations is impracticable.

(h) The State Office will provide current County maps to be displayed in the County Supervisor's office and prepare and distribute to the county offices an adequate number of copies of maps and lists of *ineligible areas*, to be displayed in the County Office and to be used as handouts, as requested, to inform the public of those areas not served by the Agency. These may be sections of maps showing only the ineligible area and the immediate eligible area surrounding the outside of the ineligible area boundary. Maps for counties without ineligible areas will be labeled "NO INELIGIBLE AREAS" at the bottom center of the map.

(i) If an area designation is changed from rural to nonrural, loans may be made only in the following instances:

(1) Applications received by FmHA prior to the change of designation may be processed.

(2) New conditional commitments may be issued and existing conditional commitments will be honored only in conjunction with the approval of RH loan applications which were received

prior to the date the area was designated non-rural.

(3) Credit sales and transfers with assumptions may be processed in such areas as authorized in § 1955.103(q) of Subpart C of Part 1955 or § 1965.126 of Subpart C of Part 1965 of this chapter, respectively.

(4) Subsequent loans may be made on property in an area where the designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

(ii) To pay equity in connection with an assumption and transfer of an RH loan.

[48 FR 200, Jan. 4, 1983, as amended at 50 FR 39639, Sept. 30, 1985; 51 FR 44898, Dec. 15, 1986]

§ 1944.11 Site requirements.

(a) The property on which the loan is made must be located on a farm, or in a designated rural area as defined in § 1944.10 of this subpart or in an area the designation of which has been changed as provided in § 1944.10(i) of this subpart and must also meet the requirements of Subpart G of Part 1940 of this chapter. A nonfarm tract to be purchased or improved with loan funds must not include or be closely associated with farm service buildings.

(b) The property must be contiguous to and have direct access from a street, road, or driveway that meets the applicable requirements of § 1924.115 (New or less than partially completed subdivisions), § 1924.116 (Existing subdivisions partially or more completed), and § 1924.117 (Scattered Site) of Subpart C of Part 1924 of this chapter. For properties having access from a driveway, the maintenance cost for the driveway must be considered when determining the applicant's repayment ability.

(c) A nonfarm tract on which a loan is to be made may not be larger than a minimum adequate site, which is the smallest area sufficient for the dwelling, an adequate water and/or waste disposal system, other related facilities, and a yard. Minimum adequate sites are:

(1) Scattered sites of 1 acre of less.

(2) House sites of 1 acre or less within a subdivision environment without central water and sewer facilities.

(3) House lots will not exceed one-fourth acre within a subdivision environment having central water and sewer, except that some variation in individual lot size may be permitted to accommodate cul-de-sacs, cluster housing concepts, or other subdivision designs which maximize good land usage.

(d) Sites which exceed the size limits set forth in paragraph (c) of this section may be authorized by the District Director when:

(1) The County Supervisor determines that minimum adequate sites are not available in the area, that the value of the total site is comparable to the value of a minimum adequate site in the area, and that the extra land does not qualify as a minimum adequate site.

(2) Zoning ordinances which require lots in excess of the limits set forth in paragraph (c) of this section were established because the additional land is needed to protect the water supply and/or provide an adequate waste disposal system, or the zoning complies with either an established State or National environmental plan or a State law, or

(3) The scattered site or subdivision was approved before the effective date of this amendment.

(e) Loans made to buy, build, or repair dwellings located in an area having special flood or mudslide hazards are subject to the requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter. The latter also contains applicable requirements regarding (1) Locating non-farm single family housing sites in or adjacent to established settlement patterns, (2) Avoiding impacts to important land resources when practicable alternatives exist, and (3) Completing environmental review documents for actions taken under this subpart.

[48 FR 200, Jan. 4, 1983, as amended at 51 FR 44899, Dec. 15, 1986; 52 FR 11982, Apr. 14, 1987; 52 FR 19301, May 22, 1987; 53 FR 36267, Sept. 19, 1988]

§§ 1944.12—1944.14 [Reserved]

§ 1944.15 Ownership requirements.

(a) After the loan is closed, the borrower must have an interest in the property to be purchased, improved, or refinanced, which qualifies as one of the following:

(1) Full marketable title.

(2) The purchaser's interest under a land purchase contract which obligates payment of the purchase price, gives the rights of present possession, control and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(3) An undivided fee interest if the co-owners meet the security requirements imposed by § 1944.18(b)(8).

(4) A life estate interest with rights of present possession, control and beneficial use of the property if the remaindermen meet the security requirements imposed by § 1944.18(b)(9).

(5) Leasehold interest if all of the following conditions are met:

(i) The applicant is unable to obtain fee title to the property and the rent charged for the lease does not exceed the rate being paid for similar leases.

(ii) The lessor owns the fee simple title.

(iii) Neither the leasehold nor the fee simple title is subject to a prior lien, unless the County Supervisor submits complete information to the State Director for review and authorization prior to approval of the loan. The amount of the RH loan plus any prior liens may not exceed the recommended market value of the leasehold.

(iv) The written lease contains the following provisions:

(A) The lessor's consent to the RH mortgage.

(B) Reasonable security of tenure. The borrower's interest must not be subject to summary forfeiture or cancellation.

(C) The right of FmHA to foreclose the RH mortgage and sell without restrictions that would adversely affect the market value of the security.

(D) The right of FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(E) The right of FmHA, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of a credit sale, FmHA will take a mortgage with rights similar to those under the original RH mortgage.

(F) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(G) Advance notice of at least 90 days to FmHA of lessor's intention to cancel or terminate the lease. Such advance notice will be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interests, and the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(H) Express provisions covering the question of liability of FmHA for unpaid rentals or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's possession or ownership, pending further servicing or liquidation.

(I) Any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(v) The lease has an unexpired term, from the date of loan approval, of at least 50 years (a lease for 25 years with an option to the lessee to renew for an additional 25 years would be considered a 50 year lease) except where:

(A) A lease is granted for the purpose of permitting a person to obtain an RH loan and the time required to process and approve the loan results in the unexpired term of the lease being not less than 49 years, or

(B) A lease is in existence at least 1 year prior to the date of the loan approval, and the unexpired term of the lease is at least 50 percent longer than the repayment period of the loan. In no case may the unexpired term of the lease be less than 15 years.

(6) Possessory rights on an Indian reservation or State-owned land if the security requirements imposed by § 1944.18(b)(2) are met.

(7) The interest of an Indian in land held in severalty under trust patents or deeds containing restrictions against alienation if the security requirements imposed by § 1944.18(b)(3) are met.

(b) If an applicant's title to any part of the property does not qualify as an ownership interest under paragraph (a) of this section and is therefore defective, an RH loan may nevertheless be made if:

(1) The defect cannot be cured at a reasonable cost, and

(2) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective, and

(3) No security value will be accorded to the parcel to which title is defective.

§ 1944.16 Dwelling requirements.

(a) *Modest house.* Applicants will be counseled that dwellings financed must provide decent, safe and sanitary housing, be modest in size, design, and cost, and not exceed the housing needs of the applicant. Housing needs will be determined by the County Supervisor, based on the number and composition of the household, along with consideration of special needs, such as facilities for the elderly, disabled, or handicapped.

(b) *Characteristics of new dwellings.* The construction or purchase of a new house shall not exceed what is typical for the current needs of low and moderate income persons in the area or the following, whichever is smaller:

No. of occupants	Maximum No. of bedrooms	Maximum No. of baths	Maximum sq ft.[1]
1	2	1	864
2-3	3	1	1008
4-5	3	1½	1104
6	4	2	1248

[1] Additional bedroom(s) may be added (not to exceed 120 sq. ft. per bedroom) when justified by composition of current family members, special needs, or for large families for which a 4-bedroom, 1248 sq. ft. house is inadequate.

(c) *Living area.* Living area or gross floor area is the square footage measured from the outside walls of the dwelling. Living area will be determined as follows:

(1) *Ranch on slab, crawl space, or basement.* First floor excluding garage carport, without deduction for any of the contained space.

(2) *Split foyer, bi-level, raised ranch, etc.* All space, without deduction for any of the contained space within that area, except for a basement garage and that portion of the lower level designed and used for utility and storage. Split foyer, bi-level, or raised ranch designs may be used only when:

(i) Site configuration lends itself to that design (sloped site),

(ii) The storage, utility, in the lower level will be below ground,

(iii) All rooms, including those in the lower level designed as living area, will be needed by the applicant in accordance with paragraph (b) of this section, and will be finished at the time of loan closing.

(3) *Cape Cod.* All of the first floor, and all of the second floor area measured to the outside of the stud knee wall, excluding below-ground basements. All rooms designed for living will be needed by the applicant in accordance with paragraph (b) of this section, and finished at the time of loan closing.

(4) *Two-story townhouses—zero lot-line.* The area, center to center of party walls, and outside of all exterior walls of all floors, excluding below ground basements.

(d) *Dwelling designs and materials.* FmHA officials shall not require the use of any building designs and/or building materials which exceed the applicable development standards for new houses or new construction, or the fair quality for site-built and modular houses and average quality for manufactured houses as described in Marshall and Swift Residential Cost handbook, or other similar cost guide. However, such designs and/or materials may be permitted when the costs are comparable to or less than the cost of fair quality material.

(e) *Prohibited features.* The following design features will not be permitted when financing construction of a dwelling or purchase of a new dwelling:

(1) Garages or carports if not customary in the area;

(2) Garages or carports exceeding 320 square feet;

(3) Nonliving areas such as balconies, decks, and patios;

(4) Dwelling designs which are incompatible with existing site conditions; i.e., raised ranch or split foyer on flat sites, or basements in wet areas;

(5) Den/recreation room;

(6) Central air conditioning systems separate and apart from heat pumps unless authorized by the State Director. Authorization must be based on known operating costs which compare favorably to heat pumps;

(7) Fireplaces.

(f) *Prohibited amenities.* (1) Bay or bow windows;

(2) Components of the house, such as kitchen cabinets, bathroom fixtures, light fixtures, etc., which exceed "fair-quality" as described in Marshall and Swift Residential Cost Handbook or some other similar cost guide, unless the cost of the selected component is comparable to or less than one of "fair quality";

(3) Fences, except:

(i) When needed to provide protection from a potentially dangerous situation; or

(ii) When customary in the area on zero lot lines, townhouse properties, or on house lots of 6,000 sq. ft. or less, to afford privacy;

(4) Decorative iron work which is not needed as a safety measure;

(5) Dishwashers, garbage disposers, or other luxury kitchen appliances;

(6) Sliding glass or atrium doors unless:

(i) The State Director determines that these types of doors are customary in other modest homes in the area;

(ii) They will not increase the cost of the house;

(7) Vaulted ceilings unless they will not increase the cost of the house;

(8) Skylights and cathedral ceilings.

(g) *Permitted features.* (1) Special design features necessary to accommodate the needs of elderly, disabled, or handicapped persons may be included.

(2) Energy saving measures which exceed FmHA requirements and cost more than 1 percent of the market value of the property, and cost effective solar energy systems may be used only after approval by the State Architect/Engineer and authorization by the State Director. Complex systems, such as active solar space heating or cooling, geothermal, hydropower, wind and photovoltaic, that could be considered unconventional, must be submitted to the National Office for concurrence prior to authorization by the State Director.

(3) Solid fuel burning devices may be authorized only if the loan approval official determines and documents that a dependable and economical fuel supply is available. All solid fuel burning devices must comply with Exhibit D, paragraph IV D 2 of Part 1924, Subpart A. To assure compliance and to remove uncertainties regarding safety and efficiency, solid fuel burning devices are authorized only after approval by a local fire official, State Architect/Engineer and subsequent authorization by the State Director.

(4) A dwelling for extended families as defined in § 1944.2(f) of this subpart may include bedroom area with an exterior entrance and an additional bathroom. This area should be designed in a manner that will not adversely affect the home's potential for resale.

(h) *Existing dwellings.* Applicants should be counseled regarding the type of housing necessary to meet their current needs. Consideration should be given to the purchase of an existing adequate but modest dwelling. In most cases, the cost of an existing dwelling, including necessary repair and renovation, is less than the cost of new construction; however, the cost advantage should not be offset by the cost of utilities and maintenance. Loans will not be made on an existing manufactured home unless it is already financed with a Section 502 rural housing loan, or is being sold from FmHA inventory. Existing dwellings must:

(1) Be structurally sound, functionally adequate, be in good repair or placed in good repair with loan funds, and meet the general requirements in

Guide 2, Subpart A, Part 1924 of this chapter.

(2) Be consistent with program objectives to provide only housing that is modest in size, design, and cost.

(3) Meet the thermal standards required in Exhibit D, paragraph IV B, Subpart A, Part 1924 of this chapter.

(4) Be inspected and certified for adequacy of electrical, plumbing, heat, water, sewage disposal systems, and termite infestation. The responsibility for these inspections and certifications will be identified in the sales agreement, or in case of FmHA inventory, will be provided by FmHA.

(5) Contain no more than 1,300 sq. ft. of living area for households of 2 or more persons, measured in accordance with paragraph (c) of this section, or not more than 1,008 sq. ft. of living area for 1 member households, unless:

(i) A larger house is necessary to meet the needs of the family in accordance with paragraph (b) of this section; or,

(ii) The house is being transferred by assumption of a 502 loan, or a credit sale is being made, and the County Supervisor determines, in either case, that the house is typical of modest homes in the area. In all cases, every effort will be made to provide housing which does not exceed the needs of the applicant/borrower; or

(iii) The District Director determines and documents in the case file that the house is modest in size, design and cost for the area in which it is located, and exempts it from the limitations established in this paragraph on the square feet of living area.

(i) *Design features/amenities in existing dwellings.* Existing dwellings with design features which add significantly to the value of the dwelling (such as those listed in paragraph (e) of this section) will not be financed unless the cost of the dwelling is no more than the cost of a new dwelling, and the dwelling with such a feature is determined by the County Supervisor to be modest. Amenities such as those outlined in paragraph (f) of this section may be included in existing dwellings unless the County Supervisor determines that a combination of those amenities causes the dwelling to be above modest.

(j) *Repairs.* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than $7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closet, or completely finished interior in some rooms. Such dwellings must meet the housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed. Manufactured homes will not be repaired unless authorized in § 1944.40 of Exhibit F, paragraph IV (d) of this subpart.

(k) *Improvements.* Improvements financed with loan funds must be on land, which after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a) of this subpart, or on an easement appurtenant to such a tract.

(l) *Manufactured homes.* Exhibit F of this subpart contains supplemental information concerning building requirements for manufactured homes.

[52 FR 11982, Apr. 14, 1987, as amended at 52 FR 45808, Dec. 2, 1987; 53 FR 13244, Apr. 22, 1988]

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security less the unpaid principal balance and past-due interest of any other liens against the security property for:

(1) An existing dwelling which is more than a year old or previously occupied as a residence, except as provided in Exhibit F of this subpart.

(2) A new dwelling when any of the following conditions exist:

(i) A conditional commitment was issued in accordance with § 1944.45.

(ii) The RH loan will be closed prior to the start of construction.

(iii) Construction is financed in accordance with § 1944.46.

(iv) The required construction inspections were made by the Federal

Housing Administration (FHA) or Veterans Administration (VA). A complete set of plans and specifications will be submitted together with copies of inspection reports or certification by FHA or VA indicating the dwelling was built in accordance with approved plans and specifications. The builder will also furnish a certification of compliance with FmHA thermal standards for new construction as required by Exhibit D of Subpart A of Part 1924 of this Chapter.

(v) The dwelling is covered by an approved insured 10-year warranty plan. The builder will provide complete plans and specifications together with a certification that construction was completed in compliance with the plans and specifications, MPS and FmHA thermal standards for new construction. The cost of the insured warranty will be included in the sale price of the dwelling, if it is to be charged to the borrower. Prior to loan approval the builder must provide evidence that he/she is an approved builder in good standing under a 10-year insured warranty plan.

(vi) The manufactured home and site meet the requirements in Exhibit F of this subpart and Exhibit J of Subpart A of Part 1924 of this chapter.

(b) A loan will be limited to 90 percent of the market value of the security for any dwelling that does not meet the requirements of paragraph (a) of this section.

(c) A loan on a dwelling meeting the requirements of paragraph (a) of this section which causes the total secured indebtedness to exceed the appraised value of the property securing the loan may be made when the amount exceeding the appraised value is all or part of a lien held by a public body, hospital or welfare institution for advances made for medical bills, welfare payments, or state motor vehicle judgments provided:

(1) The borrower is unable to settle or compromise such lien sufficiently to avoid exceeding the market value, and

(2) The lien securing the excess amount will at all times be inferior to the FmHA mortgage securing the initial loan and any subsequent loan or advances determined by the FmHA to be reasonably necessary to carry out the purpose of the initial loan or to protect the Government's financial interest, and

(3) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan, and

(4) The borrower has the ability to meet any payments on the excess debt as they become due or are likely to become due.

(d) When a subsequent loan for closing costs only is made simultaneously with a credit sale (as provided in § 1955.117(f) of subpart C of part 1955 of this chapter) or a transfer, the total indebtedness may exceed the sale price or market value of the security property, whichever is less, by no more than one percent.

(e) When FmHA is refinancing the loan of an existing FmHA borrower in accordance with § 1951.315 of Subpart G of Part 1951 of this chapter, the debt may exceed the market value of the security property to the extent necessary to refinance the borrower's outstanding indebtedness plus closing costs required in connection with the refinancing.

(f) When a subsequent loan is needed for repairs essential to protect the Government's security interest, the total FmHA indebtedness may exceed the market value of the security by no more than the amount of the subsequent loan plus a reasonable amount for closing costs.

[48 FR 200, Jan. 4, 1983, as amended at 50 FR 23903, June 7, 1985; 51 FR 41607, Nov. 18, 1986; 52 FR 246, Jan. 5, 1987; 54 FR 20521, May 12, 1989; 55 FR 3942, Feb. 6, 1990]

§ 1944.18 Security requirements.

(a) *Adequate security.* To protect the interests of FmHA all loans must be adequately secured. Except as provided in paragraph (b) of this section, a loan is adequately secured only when all of the following requirements are met:

(1) FmHA obtains at closing a mortgage on all ownership interests in the entire tract.

(2) No liens prior to the FmHA mortgage exist at the time of closing, and no junior liens are likely to be taken

immediately subsequent to or at the time of closing.

(3) The provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) regarding title clearance and the use of legal services are complied with.

(b) *Exceptions.* Exceptions to the usual security requirements will be made only as follows:

(1) *Note only.* A loan of $2,500 or less scheduled for repayment is not more than 10 years from the date of the note, and that is not subject to recapture of subsidy in accordance with Subpart I of Part 1951 of this Chapter, may be secured by the borrower's promissory note alone when the County Supervisor determines that:

(i) The applicant has a credit history which indicates an ability and willingness to pay debts when they are due;

(ii) The applicant will have sufficient income to readily meet all obligations; and

(iii) The applicant's equity in the real estate as improved equals or exceeds the amount of the proposed loan.

(2) *Mortagage insurance.* When the applicant is the holder of possessory rights on an Indian reservation or State-owned land, adequate security in the form of mortgage insurance guaranteeing payment from a State agency or Indian tribe will be acceptable. Separate State Supplements covering loan approval, title clearance, closing, appropriate loan documents and a Memorandum of Understanding with the State or Indian tribe insuring agency should be developed and used with the approval of the State Director and the concurrence of the Office of General Counsel (OGC). Approval of such supplements by the National Office is required prior to participation in any such program.

(3) *Indian land.* Indian land in trust or restricted status acquired with an RH loan will remain in trust or restricted status. In these cases mortgages must be approved by the Secretary of the Interior. When a lien is to be taken on trust or restricted property, the local Bureau of Indian Affairs (BIA) representative will be requested to furnish advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the BIA Area Director or other appropriate local BIA official as to how the information will be requested and furnished. A State Supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under such conditions.

(4) *Best mortgage obtainable.* Loans of $7,500 or less scheduled for repayment in not more than 15 years from the date of the note must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) are not required. The best mortgage obtainable without use of these procedures will be sufficient unless the loan approval official determines that the procedures in Part 1807 of this Chapter (FmHA Instruction 427.1) are necessary to assure repayment or accomplish the objective of the loan. Evidence of ownership must comply with § 1944.24(d)(2).

(5) *Leasehold.* When the applicant owns only a leasehold interest, FmHA may not require a mortgage on the lessor's interest but will treat the lessee's interest like any other type of ownership interest in determing whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5) (iv) and (v). In any State in which applicants are likely to own a leasehold interest, the State Director will issue a State Supplement outlining the technical requirements for making such loans.

(6) *Security by junior lien.* FmHA may take a junior mortgage as security for an RH loan if the tract which will secure the FmHA mortgage provides adequate security for the entire prior lien debt and the RH loan, and

(i) The prior mortgage does not contain provisions that may jeopardize FmHA's security position or the borrower's ability to repay the loan, such as provisions for future advances, forfeiture, cancellation, foreclosure without adequate notice to junior lienholders, the charge of a flat fee of more than 5 percent attorney's cost in case of foreclosure; or

(ii) Such provisions are satisfactorily limited, modified, or waived.

(7) *Liens junior to FmHA lien.* Liens junior to the FmHA lien will be allowed at closing or immediately subsequent to closing only when:

(i) The junior lien will not interfere with the purposes or repayment of the RH loan, and

(ii) The total amount of the RH loan, the junior lien, and any prior liens will not exceed the market value of the security except as provided in § 1944.17(c).

(8) *Undivided interest.* When the applicant owns an undivided interest in the property, the co-owners' interests need not be included in the mortgage in the following cases:

(i) When one or more of the co-owners are not legally competent, or cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's recommendation accompanied by a full statement of ownership and conditions which justify the exclusion. All legally competent co-owners using or occupying the property will be required to sign the mortgage. Co-owners will be required to sign the note when necessary for a sound loan or to obtain the required security. The loan may not exceed the percentage of the market value of the property represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests.

(ii) When an applicant owns an undivided interest in part of a farm and seeks a loan to build or improve facilities on another part in which the applicant owns the entire interest, or the applicant owns only an undivided interest in a building site which will be a part of the farm, the interest of the applicant's co-owners may be excluded from the security requirements upon approval by the State Director if:

(A) The loan will be adequately secured by the applicant's equity in the wholly owned tract,

(B) The market value of the jointly owned tract is at least equal to the debts against it, and

(C) The applicant's participation in the joint ownership of part of the farm and its operations has been and is likely to continue to be successful.

(9) *Life estate.* When the applicant owns a life estate interest in the property, the remaindermen's interests need not be included in the mortgage if one or more of the remaindermen are not legally competent or cannot be located or if the remainder rights are divided among such a large number of remaindermen that it is not practicable to obtain the signatures of all the remaindermen. In that case, the mortgaging of remainder interests, not exceeding 50 percent of the total remainder interest may be excluded from the security requirements upon prior approval by the State Director. The State Director should review the County Supervisor's and District Director's recommendations accompanied by a memorandum stating complete ownership information and circumstances which justify the exclusion. In such cases, the loan may not exceed the percentage of market value of the property represented by the interests of those remaindermen who sign the mortgage, determined with due regard to all adverse factors involved. Remaindermen will be required to sign the note when necessary for a sound loan or to obtain the required security.

(10) *Farm dwelling.* When the applicant is the owner of a farm, a mortgage may be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include or be close to farm service buildings, must be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, be contiguous to and have direct access to a public road, or

(ii) The tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(11) *Land purchase contract.* When the ownership interest is by virtue of a land purchase contract a prior lienholder's agreement must be obtained as required by Part 1807 of this Chapter (FMHA Instruction 427.1, paragraph II F 5.)

(c) *Additional security.* When necessary to supplement the applicant's equity in the farm or nonfarm tract on which the dwelling is located, or to facilitate servicing the loan, FmHA may also take a mortgage on other real estate owned by the applicant.

(d) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with applicable portions of Subpart C of Part 1965 of this chapter and the provisions for written consent of any prior lienholder. In small nonfarm tract cases, the State Director may authorize withholding transmittal of assignments to lessees for execution until production begins. The State Director may, in individual cases, waive the requirement of taking an assignment if repayment of the loan is reasonably assured from other sources.

[48 FR 200, Jan. 4, 1983, as amended at 50 FR 39639, Sept. 30, 1985]

§§ 1944.19—1944.21 [Reserved]

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts, except as authorized under § 1951.315 of Subpart G of Part 1951 of this chapter, or debts on a building site without a dwelling or debts on a manufactured home is not authorized.

(b) Loan funds may be used for refinancing non-FmHA debts on a dwelling only if the debt was incurred by the applicant prior to the date the application was filed and the following conditions can be met:

(1) The debt was incurred for purposes for which a Section 502 RH loan could be made or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced, such as accrued interest, insurance premium or real estate tax advances or preliminary foreclosure costs.

(2) The debt must be a lien against the property which will be security for the RH loan. The promissory note and security instrument for the debt must represent rates and terms that were typical and customary for long-term residential financing in the area at the time the debt was incurred.

(3) A loan to refinance a qualified secured debt may also include short-term or unsecured debts, if necessary to establish a sound repayment ability, if such short-term or unsecured debts were incurred for authorized Section 502 loan purposes and are not a significant portion of the loan.

(4) Payments on the debt are so seriously delinquent, for reasons beyond the control of the applicant, that the applicant is likely to lose the dwelling at an early date if the debt is not refinanced. Such delinquency must be due to loss of employment or income, illness, or such other similar events or unforeseen circumstances.

(5) A statement will be obtained for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installments, amount of delinquency, unpaid principal and accrued interest.

(c) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies to make the dwelling decent, safe and sanitary, an existing lien which meets the requirements of paragraphs (b) (1), (2) and (3) of this section may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(d) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(1) Fees for legal, architectural and other technical services, or

(2) Materials, construction or site acquisition.

(e) The County Supervisor may authorize the use of RH funds to pay costs provided for in paragraphs (d) (1) and (2) of this section only when all of the following conditions exist and have been documented in the borrower case file:

(1) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed. In the case of a subsequent loan to complete improvements previously planned, the costs must have been incurred after the initial loan was closed.

(2) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(3) The construction or repair work conforms to that shown on the building plans and specifications or Form FmHA 1924-1, "Development Plan," when applicable, and the costs were incurred for authorized section 502 loan purposes.

[48 FR 200, Jan. 4, 1983, as amended at 52 FR 6132, Mar. 2, 1987; 52 FR 8035, Mar. 13, 1987]

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with Subpart S of Part 1951 of this chapter.

[53 FR 35716, Sept. 14, 1988]

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter or a lesser standard as may be prescribed by FmHA for demonstration type loans.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart C of Part 1924 of this chapter, except as provided for manufactured homes in Exhibit J of Subpart A of Part 1924 of this chapter. Subdivisions will be accepted by FmHA without further processing when the developer provides written evidence of current subdivision acceptance by HUD or VA. The developer must also provide proof of compliance with exception conditions established by HUD or VA. Such evidence will be reviewed and approved by the State Director.

(c) *Appraisal.* The value of property securing RH loans will be determined as follows:

(1) When a mortgage will be taken on a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with Subpart C of Part 1922 of this chapter. A small farm for the purpose of this subpart is a farm as defined in § 1944.2(g) of this subpart which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) When a mortgage will be taken on a farm tract or leasehold interest in a farm tract to secure a total indebtedness of more than $7,500, an appraisal of the security property will be made in accordance with Subpart A of Part 1809, of this chapter (FmHA Instruction 422.1).

(3) When the total indebtedness will be not more than $7,500, an appraisal of the real estate or leasehold interest is not required, unless the County Supervisor or loan approval official is uncertain as to the adequacy of the security. When an appraisal is not completed the County Supervisor will document in the case file the estimated market value of the property.

(4) When a loan is being made to an FmHA real estate borrower and the FmHA appraisal report in the borrower's case folder indicates the value of the security property is adequate to secure the total real estate indebtedness, including the planned loan, an appraisal is not required.

(5) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(d) *Title clearance and legal services.* (1) When real estate will be taken as security except on a best mortgage obtainable basis (including a mortgage on a leasehold), title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). Title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is taken as security without title clearance or use of legal services, each applicant will be required to submit evidence of ownership of the farm or nonfarm tract. This may be the original or a certified or photostatic copy of the deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether or not the applicant is a qualified owner, such action will be taken as the County Supervisor considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the OGC regarding the evidence of ownership submitted and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807 of this chapter (FmHA Instruction 427.1). For example, it may include such evidence as the levy and payment, in the applicant's name, of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner. No loan will be made if the County Supervisor has actual knowledge that the applicant does not have a valid title to the property.

[48 FR 200, Jan. 4, 1983, as amended at 48 FR 7159, Feb. 18, 1983; 50 FR 39964, Oct. 1, 1985; 51 FR 6393, Feb. 24, 1986; 51 FR 41607, Nov. 18, 1986; 52 FR 19301, May 22, 1987]

§ 1944.25 Rates, terms, and source of funds.

(a) *Source of funds.* All loans financed under this program will be funded from the Rural Housing Insurance Fund (RHIF).

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

(c) *Amortization.* Loans will be scheduled for repayment over a period that will not exceed the expected useful life of the property as a dwelling to assure the loans are adequately secured. Only one of the amortization periods listed in this paragraph may be used for a borrower. Each loan will be scheduled for repayment from the date of the promissory note, for a period not to exceed one of the following:

(1) 33 years for initial and subsequent loans, except as otherwise indicated in this section.

(2) 38 years for initial loans (subsequent loans may be made for a period not to exceed the remaining years of the initial loan) to applicants whose adjusted annual incomes do not exceed 60 percent of the median income for the area, if necessary to show repayment ability (as reflected by comparing the annual installment for repayment at 1 percent interest with the resulting repayment ability figure of a completed Form FmHA 431-3, "Household Financial Statement and Budget"). Adjusted income limits for eligibility for the 38-year term appear in Exhibit C of FmHA Instruction 1944-A (available in any FmHA office).

(3) 30 years for manufactured homes.

(4) 25 years for Repair and Rehabilitation loans as set forth in § 1944.34(f)(6)(iii) of this subpart.

(5) 10 years for loans not exceeding $2,500 which are not secured by a real estate mortgage.

(d) *Interest credit.* Borrowers may be eligible for an interest credit subsidy which can reduce the borrower's effective interest rate to as low as 1 percent. The policies and procedures for granting and servicing interest credit on RH loans are set forth in § 1944.34.

[48 FR 200, Jan. 4, 1983, as amended at 51 FR 6733, Feb. 26, 1986; 51 FR 44899, Dec. 15, 1986]

§ 1944.26 Application processing.

(a) *Application forms.* (1) Applications for section 502 RH loans will be made on Form FmHA 410-4, "Application for Rural Housing Assistance (Nonfarm Tract)," or Form FmHA 410-1, "Application for FmHA Services," which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this chapter.

(2) Form FmHA 1944-3, "Budget and/or Financial Statement," will be completed prior to loan approved for each low- or very low-income applicant for a Section 502 loan, transfer with assumption, or credit sale. The form will be used to determine repayment ability. When preparing Form FmHA 1944-3, the following will be considered.

(i) Non-cash items (*e.g.*, food stamps, scholarships, free clothing, or transportation which help reduce the applicant's budgeted expenses) will be properly documented, and budgeted expenses will be reduced accordingly.

(ii) Dependably available income from all sources not used to determine adjusted annual income, such as earning from employment of minors, foster care payments, and similar income items, will be considered to the extent it is used to offset budgeted expenses even though such income will not be included in "annual income."

(3) An applicant who completes Form FmHA 410-1 will also complete Form FmHA 431-2 as prescribed in Subpart B of Part 1924 of this chapter. In preparing Form 431-2, the provisions of paragraphs (a)(2) (i) and (ii) of this section will apply to allow consideration of all income and non-cash items. When a loan is to be made to a non-operator farmowner, the columns in Table B and C pertaining to the operator's share will be changed to the owner's share. If an application is being considered early in the crop year for a borrower who has a current Form FmHA 431-2, such form will be revised to show changes in the financial statement and significant changes in the planned operation. However, if the crop year is well advanced or completed, a farm and home plan will be developed for the ensuing year. The applicant will also complete Form FmHA 431-1, "Long-Time Farm and Home Plan," when needed.

(4) When available funds are not adequate to complete the processing of all applications as they are received, a preliminary determination of eligibility will be made based on information provided by the applicant. To avoid duplication of work, a credit report or Verification of Employment will not be ordered for those who appear eligible until it is known that funds will be available for the processing of the loan and it appears that such information will not have to be updated before loan closing. Applicants who appear eligible at time of application will be advised within 30 days of the filing of the application of the estimated waiting period and that a final determination of eligibility will be made when loan funds are available for the processing of their applications. Applicants found not eligible will be advised of the appeal procedure in accordance with Subpart B of Part 1900 of this chapter. Applicants on the waiting list will be notified when funds are available and will be advised of information necessary to determine final eligibility for loan approval.

(5) Form 1910-5, "Request for Verification of Employment," will be used to verify employment or income of the loan applicant. The form will be mailed or hand-carried to the employer only by the FmHA authorized representative (e.g., FmHA employee, contractor for interest credit renewals, or contractor for account servicing actions), authorized packagers for rural housing applications, or in the case of interest credit renewals, by the borrower. When FmHA mails the form directly to the employer, the Agency will provide self-addressed "Business Reply Mail" envelope(s) for the employer to return the completed form to FmHA. In all other cases, the sender will provide the employer with stamped envelopes for returning the completed form. The envelopes provid-

ed to the employer will be pre-addressed with the County Office address except in the case of contractors for interest credit renewals or contractors for other servicing actions where their return addresses will be shown. Other income information that cannot be obtained by the use of this form, may be obtained by mail from the other sources of income.

(6) The County Supervisor must review with each loan applicant, and the applicant must sign Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts".

(b) *Processing priorities.* Applications for section 502 RH loans will be processed in accordance with § 1910.4(b) of Subpart A of Part 1910 of this chapter with the following exceptions:

(1) All applications, including those on hand prior to the revision date of this paragraph, will be separated into two major groups: (i) Low income, moderate income and other, and (ii) Very low income, based on data contained in the application form. The county office will enter the names of the applicants in date order of the receipt of the applications, on two Forms FmHA 1905-4, "Application and Processing Card—Individual," with the proper designation of "Low and moderate income and other" or "Very low income" in the upper right hand corners of the cards.

(2) Applications in the above income groups, including those applications on hand prior to revision date of this paragraph, will be assigned to an appropriate category (except as otherwise noted in this subparagraph), and the category numeral entered on the left side of the Forms FmHA 1905-4, to establish a processing priority system as follows:

(i) The State Director will maintain an adequate reserve to fund applications for the following types of loans (applications for such loans will not be categorized, will be processed as soon as they are received in the county office and the approved loans submitted through the State Office for funding):

(A) Credit sales of inventory property with or without subsequent loans.

(B) Transfers by assumption with or without subsequent loans.

(C) Subsequent loans for essential improvements and repairs.

(ii) Category I. Applicants for refinancing of debts in accordance with § 1944.22(b) and applicant hardship cases as determined by the State Director. These also will be processed as soon as the application is received.

(iii) Category II. Applicants for mutual self-help housing loans in FmHA approved self-help projects.

(iv) Category III. Applicants living in deficient housing for a period of more than 6 months prior to the date of application. Base this determination on information obtained from the applicant and document it on the application. If the County Supervisor believes there is reason to question the accuracy of the information provided, an on-site inspection may be made. Deficient housing is defined as follows:

(A) Lack of complete plumbing: no bathtub or shower, wash basin, flush toilet or hot running water for the exclusive use of the occupant, or

(B) The persons per room ratio is greater than one. The number of rooms in a dwelling includes bedrooms, a living room, a dining room, a kitchen, and other rooms designed as living area.

(v) Category IV. All other section 502 RH applications.

(c) *Selection for processing.* Quarterly, or as necessary, the County Supervisor will select a sufficient number of applicants from categories II, III, and IV, in that order, to assure an adequate number of loans which can be processed and approved during the period. In selecting applications for processing, the requirement of serving very low-income families and persons in accordance with the Agency's funding directives (available in any FmHA office) will be complied with. Processing will be handled in accordance with the following:

(1) Selected applicants will be notified that they have not more than 30 days in which to submit the necessary material (including the amount the applicant must pay to FmHA for each credit report needed to complete the credit investigation) to continue the processing to the loan. It is the policy

not to order a credit report for RH loan applicants whose requested loan will likely not exceed $7,500 , but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in § 1910.53 (g) of Subpart B of Part 1910 of this chapter. When credit reports will be ordered, the notification must also indicate that the credit report fee paid by the applicant is nonrefundable after credit reports have been ordered. The amount charged the applicant for each credit report is as prescribed in Exhibit A (available in any FmHA office) of Subpart B of Part 1910 of this chapter.

(2) The County Supervisor will post and update after each selection period on the county office bulletin board in a conspicuous place a list of the names of those applicants who have been selected and notified of the processing of their applications.

(3) After applicants are notified, the loans will be approved in the order in which required material is submitted to the county office.

(4) Those applicants supplying all necessary items but for whom loans cannot be funded in the current quarter will be held over for priority funding from the subsequent quarter's funds, according to the date of submission of complete material, prior to the selection of any other applicants.

(5) Applicants who respond affirmatively to the notice of selection for processing but fail to furnish within 30 days all material necessary to approve a loan will be by-passed for the current quarter but will be reselected for the ensuing quarter. If all required material for loan approval is not received within 30 days after the second selection notification, the applicants will be notified that after an additional 15 days their application will be withdrawn.

(d) *Applicant interview.* A personal interview will be conducted by FmHA employees with all applicants before approval of the requested loan. During the interview, the applicant will verify information, including any submitted by a packager or others, concerning the applicant's employment and income. The applicant will also verify information concerning persons who will occupy the dwelling and on whose income eligibility for the loan and any interest credit is based. The County Supervisor will inform the applicant, and reach an understanding with the applicant, as to the FmHA loan making and servicing authorities, and the responsibilities of the applicant or borrower. The *discussion* will include an explanation of all options of assistance which may be available to the applicant or borrower. A documentation of the items *discussed* will be placed in each applicant case file and will be dated and signed by both the applicant and County Supervisor. A copy will be provided to the applicant or borrower at the time of the personal interview. Exhibit D of this Subpart sets forth items which must be included and may be used as a guide in preparing the required documentation for this purpose. *No housing loan will be approved without such evidence that a personal interview has been completed.*

(e) *Credit counseling.* During the time of the applicant's initial interview and application processing, consultation will be provided as necessary to assist the applicant in preparing and understanding a meaningful budget, Form FmHA 431-2, or Form FmHA 1944-3, which will reasonably reflect the applicant's repayment ability. County Supervisors will work closely with applicants to better understand all sources of income and cash substitutes. Credit and financial counseling will also be provided, as needed, to suggest financial management methods by which the applicant's success as a homeowner may most likely be achieved. When the County Supervisor determines that the applicant does not have sufficient income to repay the requested loan, other alternatives will be considered such as reducing amenities in the dwelling, selecting a less expensive dwelling or site, obtaining a cosigner, reduction of present debt load or, when appropriate, building the dwelling by the self-help method.

(f) *Determining eligibility.* (1) The County Committee will determine eligibility of RH applicants who are also applying for or are indebted for a

Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants.

(2) Repayment ability as outlined in § 1944.8(a)(2), will be evaluated on the circumstances surrounding the individual case including possible eligibility for interest credits as provided in § 1944.34 of this subpart. Form FmHA 1944-3 will be completed by the applicant and the County Supervisor as set forth in paragraph (a)(2) of this section. Under no condition(s) will arbitrary guidelines or "rules of thumb" be used. If the applicant(s) can verify payment of a comparable or greater amount for housing costs (rent, utilities, and insurance, etc., as compared to real estate taxes, property insurance, utilities, maintenance, and scheduled FmHA payments for the previous 12 months), the applicant will be presumed to have repayment ability for the requested loan unless:

(i) Current annual income is less than past income,

(ii) Planned expenses are proportionally greater than current expenses, when compared to income, or

(iii) The applicant has increased debts, or failed to pay existing debts in order to maintain the present standard of living.

(3) Credit history will be considered to the extent that it is used in evaluating all applicants for similar types and amounts of credit in accordance with the ECOA. For instance, credit requirements for a female applicant will not differ from those of a male applicant.

(4) The age of the applicant will not be used as a consideration of eligibility, except as provided in § 1944.9(d).

(5) The County Supervisor must determine whether the applicant could obtain housing credit elsewhere as follows:

(i) In any case in which a County Supervisor determines there is no possibility of the applicant's obtaining adequate housing credit elsewhere and, therefore, does not require the applicant to provide evidence that an effort has been made to obtain such credit, the County Supervisor will record that conclusion and the basis for it in the loan docket.

(ii) In any case where there may be a possibility that credit could be obtained from another source, the County Supervisor will require the applicant to make a diligent effort to obtain other credit.

(A) Applicants will be expected to apply for credit from lenders engaged in extending long-term housing credit in the area.

(B) Applicants should be advised to request lenders to indicate the amount, interest rate, and terms of housing credit they would be willing to extend to the applicant.

(C) When appropriate, the County Supervisor should verify evidence presented by an applicant that adequate credit is not available elsewhere.

(D) Letters from the lenders and any other evidence indicating that the applicant is unable to obtain credit elsewhere will be included in the loan docket.

(E) In no case will a loan be made to an applicant who is able to obtain the credit needed from another source at terms that can reasonably be expected to be within the applicant's repayment ability.

(g) *Veterans preference.* Veterans preference will apply when:

(1) There is a shortage of funds.

(2) Obligating forms are ready to be submitted to the Finance Office, and

(3) There is more than one application in the same category having the same date.

(h) *Optioning of real estate.* The County Supervisor should advise the applicant about the size, design, quality, cost and location of the dwellings and dwelling sites suitable for the RH program. If possible this should be done before the applicant selects a property to be purchased. Form FmHA 440-34, "Option to Purchase Real Property," should be used; however, other option forms may be used if their provisions are acceptable.

(i) *Application assistance.* Builders, brokers, contractors, and others including organizations such as those providing self-help assistance, who can provide complete information on the applicant and the house that is to be purchased, may assist in the assembly and processing of loan applications. Form FmHA 1944-12, "Rural Housing

Loan Application Package," will be used for this purpose. Builders or sellers who received conditional commitments may also assist applicants in applying for an RH loan to buy a house for which a conditional commitment was issued in accordance with § 1944.45. The County Supervisor will meet with such interested parties to explain:

(1) The eligibility requirements of RH loans,

(2) The size, design, cost and location of homes that can be financed,

(3) The requirements of Subpart E of Part 1901 of this chapter.

(4) How applications will be handled, and

(5) The type of information that must be submitted. The information to be submitted is listed in Exhibit A of this subpart which may be used as a guide.

(j) *Appeal.* If the decision on the applicant's request for assistance is unfavorable and was based on appealable determinations, the applicant will be notified of appeal rights as required by § 1910.6(b) of Subpart A of Part 1910 and Subpart B of Part 1900 of this chapter.

(k) *Accountability.* Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

[48 FR 200, Jan. 4, 1983, as amended at 49 FR 40793, Oct. 18, 1984; 50 FR 39964, Oct. 1, 1985; 51 FR 6393, Feb. 24, 1986; 51 FR 13453, Apr. 21, 1986; 51 FR 27157, July 30, 1986; 52 FR 11984, Apr. 14, 1987; 53 FR 17688, May 18, 1988; 54 FR 29331, July 12, 1989; 55 FR 25077, June 20, 1990]

§§ 1944.27—1944.29 [Reserved]

§ 1944.30 Preparation of loan docket.

(a) Forms and documents will be fastened in the designated filing positions of the case folder as prescribed in Exhibit A of FmHA Instruction 2033-A (available in any FmHA office). Appropriate loan docket forms will be prepared in accordance with the Forms Manual Insert (FMI) for distribution as follows:

Form No.	Name of form	Total No. of copies	No. signed by borrower	Loan docket	Copy for borrower
FmHA 410-1	Application for FmHA services	1	[1] 1	[1] 1	
FmHA 410-4	Application for rural housing assistance (nonfarm tract).	1	[1] 1	[1] 1	
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	[1,2] 2	1	[1] 1	[2] 1
FmHA 1944-12	Rural housing loan application package.	1		[1] 1	
FmHA 1910-5	Request for verification of employment.	1		[1] 1	
FmHA 410-7	Notification to applicant on use of financial information from financial institution.	2		[2] 1	[1] 1
FmHA 410-8	Applicant reference letter	1		[1] 1	
FmHA 410-9	Statement required by the Privacy Act.	2	[1,2] 2	[2] 1	[1] 1
FmHA 431-2	Farm and home plan	1	[1] 1	[1] 1	(in record book)
FmHA 431-1	Long-time farm and home plan	2	[1,2] 2	[2] 1	[1] 1
FmHA 1944-3	Budget and/or financial statement	2	[1,2] 2	[2] 1	[1] 1
FmHA 440-2	County committee certification or recommendation.	1		[1] 1	
FmHA 427-8	Agreement with prior lienholder (or similar form).	[3] 3		[1] 1	[2] 1
FmHA 440-34	Option to purchase real property	[4] 3	[1,2] 2	[1] 1	[2] 1
FmHA 1924-1	Development plan (including any plans, specifications, and cost estimates).	[5] 2	[1] 1	[1] 1	[2] 1
FmHA 422-1	Appraisal report (farm tract) (with attachments).	1		[1] 1	
FmHA 1922-8	Uniform residential appraisal report	1	[1] 1		
FmHA 427-9	Preliminary title opinion	2		[1] 1	[2] 1 (designated attorney)

Form No.	Name of form	Total No. of copies	No. signed by borrower	Loan docket	Copy for borrower
FmHA 1944-6	Interest credit agreement (section 502 RH loans).	3	[1] 1	[1] 1	[2] 1 (finance); [3] 1
FmHA 1940-1	Request for obligation of funds	4	[1] [2] 2	[1] 1	[2] 1
FmHA 1944-2	Single family housing fund analysis	4		[2] 1	
FmHA 1940-21	Environmental Assessment for Class I Action.	1	1-0	, or	
FmHA 1940-22	Environmental Checklist Categorical Exclusions.	1	1-0		
FmHA 440-35	Acceptance of option	2	[1] 1	[2] 1	[1] [6] 1
FmHA 1940-41	Truth in lending disclosure statement.	3	(See FMI)	[2] 1	[1] 1
FmHA 1940-43	Notice of right to cancel	3	(See FMI)	[2] 1	[1] [2] 2
FmHA 400-1	Equal opportunity agreement	2	2	[1] 1	[2] 1
FmHA 400-3	Notice to contractors and applicants	3		[2] 1	[2] 1; [1] 1 (contractor)
FmHA 400-6	Compliance statement	3		[2] 1	[1] 1 (contractor); [2] 1
FmHA 440-9	Supplementary payment agreement	2	[1] 1	[1] 1	[2] 1
FmHA 440-45	Nondiscrimination certificate (individual housing).	2	[1] [2] 2	[1] 1	[2] 1

[1] Original. [2] Copy. [3] Copy to lienholder. [4] Signed copy of option previously delivered to seller. [5] When contract method will be used, 3 copies of plans and specifications will be required. [6] Original to seller.

(b) All other documents necessary for approval of the particular loan will be included in the loan docket. This will include the following or others as appropriate:

(1) A copy of Exhibit D, "Rural Housing Applicant Interview," or a similar document executed by the applicant.

(2) Credit report(s) on the applicant(s).

(3) Evidence of ownership such as a certified copy of the applicant's deed, lease, purchase contract, or other evidence specified in § 1944.24(d), or a statement by the County Supervisor that such documents have been reviewed.

(4) Estimates of the value of any security for which a formal appraisal report is not required.

(5) Agreements from prior lienholders, if any, when necessary to comply with §§ 1944.18(b)(6) and 1807.2(f) of this chapter (paragraph II F of FmHA Instruction 427.1).

(6) When the loan is to be secured by a junior real estate mortgage, the docket must include a copy of each prior mortgage and, if available, a copy of each secured note or other obligation, furnished by the applicant at the applicant's own expense. The docket must include a current statement signed by the mortgagee showing the amount of unpaid principal secured by the mortgage; the amount of any accrued interest; the amount of any delinquency, with interest and principal shown separately; and, if a copy of the note is not furnished, its maturity date, payment schedule, interest rate, and a summary of any other provisions of the note.

(7) When the applicant obtains a cosigner, the docket must include that cosigner's current financial statement, income statement, and employment or business history. This will be supplemented by a statement from the County Supervisor as to the cosigner's financial condition and reputation for paying debts, and any other information, such as a credit report, that will be of assistance to the loan approval official.

(8) When the loan is for a manufactured home, the supplemental information needed is listed in Exhibit F, paragraph XVIII of this subpart.

[48 FR 200, Jan. 4, 1983, as amended at 48 FR 52566, Nov. 21, 1983; 50 FR 16056, Apr. 24, 1985; 51 FR 41607, Nov. 18, 1986; 52 FR 8036, Mar. 13, 1987; 53 FR 10241, Mar. 30, 1988; 53 FR 17688, May 18, 1988; 53 FR 36267, Sept. 19, 1988; 54 FR 8523, Mar. 1, 1989; 54 FR 29332, July 12, 1989]

§ 1944.31 Loan approval.

(a) The State Director, District and Assistant District Directors, County and Assistant County Supervisors are authorized to approve or disapprove loans in accordance with Subpart A of Part 1901 of this chapter.

(b) The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations and that funds are available for the loan.

(c) Prior to loan approval a new verification of employment will be required if more than 90 days have elapsed since the date of the last verification of employment, or if evidence is brought to the attention of the loan approval official that indicates the applicant's financial status has changed. Any applicable environmental review document required by Subpart G of Part 1940 of this chapter will be completed. If an environmental review is not required, for example, because the proposed building site is within a subdivision for which FmHA has previously completed an environmental assessment, a notation must be made in the running record of the loan docket by the processing official briefly stating the reason why no environmental review is required by Subpart G of Part 1940.

(d) When a loan is approved, the loan approval official will:

(1) Indicate on all copies of Form FmHA 1940-1 any condition that must be met before the loan is closed. Also, the loan approval official will specify all security requirements that the applicant will need to meet, such as a first real estate lien or a junior lien subject to certain prior liens. If title evidence is required in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant's furnishing the required title evidence. When the applicant furnishes required title evidence, the County Supervisor will proceed with processing the loan. In those cases in which the title evidence does not comply with the conditions specified by the approval official, the docket will be reconsidered by the loan approval official.

(2) Sign the approval certification on the original and one copy of Form FmHA 1940-1 and insert title in the space provided. The remaining copies will be conformed.

(3) If a loan is not approved after the docket has been developed, the reason for such action with date and initial of the approval official will be shown on the original Form FmHA 1940-1 and the County Supervisor will notify the applicant in accordance with § 1910.6(b) of this chapter.

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 10241, Mar. 30, 1988; 53 FR 36267, Sept. 19, 1988]

§ 1944.32 Actions subsequent to loan approval.

(a) *Requesting a loan check.* (1) A loan check may be requested when all approval conditions can be met and necessary curative actions have been taken to provide a satisfactory title to real estate security. All check requests will be requested through the field office terminal system.

(2) A loan check may be requested at the time of loan approval by entering the amount of the check requested on Form FmHA 1940-1 when one of the following conditions exist:

(i) The loan will be secured by a promissory note only, or

(ii) Real estate security will be taken and the County Supervisor is reasonably certain that satisfactory title evidence can be obtained and the loan can be closed within 20 working days from the date of the check.

(3) When not more than $4,000 of the loan funds will remain unexpended for more than 15 days after loan closing, the total amount of the loan will be requested in a single advance.

(4) If loan funds cannot be expended within 15 days, the County Supervisor will enter in the appropriate "block" of Form FmHA 1940-1 the amount of loan funds to be disbursed at loan closing. Additional loan funds will be requested when, and in amounts, needed by submitting a completed copy of Form FmHA 440-57 to the Finance Office, or by telephone request if the additional funds cannot be received by the date needed using mail service. The County Supervisor should work with borrowers, developers, and others to be sure that funds will be available when needed and to reduce the multiple advances to a reasonable number. Any loan funds not requested by the "amortization effective date" for the loan, will be disbursed by the Finance

Office to the County Office by check dated on the amoritization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

(b) *Handling loan checks.* (1) When the loan check or borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with § 1902.6 of this chapter no later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(c) *Cancellation of loan.* Loans may be cancelled before loan closing by the use of Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," prepared in accordance with the FMI for the form. Checks received in the County Office will be returned as prescribed in FmHA Instruction 102.1 (available in any FmHA office). Interested parties will be notified of the cancellation as provided in part 1807 of this chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6(b) of subpart A of part 1910 of this chapter.

(d) *Increase or decrease in amount of loan.* If it becomes necessary that the amount of the loan be increased or decreased prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office. The loan docket will be revised and reprocessed in accordance with the FMI for Form FmHA 1940-1.

(e) *Property insurance.* Buildings on the property which is to be taken as security for the loan will be insured in accordance with Subparts A and B of Part 1806 of this chapter (FmHA Instructions 426.1 and 426.2) when appropriate.

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 26590, July 14, 1988; 54 FR 39727, Sept. 28, 1989]

§ 1944.33 Loan closing.

(a) *Loans approved with interest credit.* If the loan will be closed and Form FmHA 1944-6 or 1944-A6, "Interest Credit Agreement (Section 502 RH Loans,)" will be executed more than 90 days after the last "Verification of Employment," or if there is evidence to indicate the applicant's financial status has changed significantly, a current "Verification of Employment" will be obtained and the amount of interest credit will be determined on the basis of the applicant's new circumstances. If the adjusted income exceeds the low-income limit set forth in Exhibit C of this subpart (available in any FmHA office), the loan will not be closed unless authorized by the State Director. Such authorization may be granted if there is documented evidence to clearly indicate other credit is not available. Interest credit will not be granted in any case in which the adjusted income exceeds the moderate-income limit set forth in Exhibit C.

(b) *Loans approved without interest credit.* Further review of the applicant's financial status is not required at the time of closing unless the loan is closed more than 90 days after the date of loan approval, or there is evidence to indicate the financial status has changed significantly. If the adjusted income exceeds the limit for moderate income set forth in Exhibit C of this subpart (available in any FmHA office), the case will be referred to the State Director. The State Director may authorize closing of the loan if there is documented evidence to clearly indicate other credit is not available.

(c) *Promissory Note.* Form FmHA 1940-16 "Promissory Note," will be prepared and signed in accordance with Part 1807 of this Chapter (FmHA Instructions 427.1), and the FMI for the form.

(1) The payment alternatives of the note will be completed in accordance

with the FMI for the form. Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases if the loan is closed before any funds are advanced by the Finance Office or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative I) after the deferment period.

(2) The payment provision of the note will be completed in accordance with the FMI for the form and the following:

(i) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(ii) The annual payment provision will be used only for borrowers who do not regularly receive monthly income throughout the year. If installments are not to be deferred, the following provisions apply:

(A) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(B) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to the next January 1.

(C) Form FmHA 440-9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(d) *Real estate mortgage*. Form FmHA 427-1, "Real Estate Mortgage for (State)," will be used for loans to be secured by a real estate mortgage. Any changes made in the text by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage. Additions will be made on the mortgage in the following cases:

(1) For a loan secured by a mortgage on a leasehold, the following language, or similar language which in the opinion of OGC is legally adequate, will be inserted in the mortgage just before the legal description of the real estate:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of —— years beginning on ——, 19—, created, executed and established by certain Lease dated ——, 19—, by ———— as lessor(s), and recorded at Book ——, Page — of the — Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:"

(2) For a loan secured by a mortgage on a leasehold an additional covenant will be inserted in the mortgage to read as follows:

"Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

(3) For all initial and subsequent Section 502 RH loans, until the mortgage forms are revised, the following additional covenant will be inserted above the signature line on the mortgage and be initialed at loan closing by all parties signing the mortgage.

"This instrument also secures the recapture of any interest credit or subsidy which may be granted to the borrower(s) by the Government pursuant to 42 U.S.C. 1490a."

(e) *Collection of first installment*. If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

(f) *Direct payments*. Direct payment coupons for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least six monthly payments on time. The coupons may then be delivered to the borrower and payments mailed to the retail lockbox. The County Supervisor may retain the payment coupons for a longer period if such action is considered to be necessary to determine that the borrower is able to make timely payments as agreed. Payments made to the County

Office will be processed as prescribed in FmHA Instruction 102.1 (available in any FmHA office). Cash payments, refunds, and extra payments made by borrowers will be handled in accordance with subpart B of part 1951 of this chapter.

(g) *Owner's policy of title insurance.* If an owner's policy of title insurance is obtained, it will be delivered to the borrower as soon as it is received from the title insurance company.

(h) *Real estate mortgage after filing.* When the real estate mortgage is returned by the filing official or loan closing official, the original will be filed in the borrower's case folder. If the original is retained by the filing official in the official records, a copy conformed to show the recording data including the date and place of recording and the book and page number will be filed in the borrower's case folder. A copy of the mortgage will be delivered to the borrower.

(i) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases a loan is closed when the borrower executes the note and any other required instruments.

(j) *Water stock certificate or other such collateral.* When water stock certificates or other such collateral are part of the security, they will be retained in the County Office. A notation will be made on Form FmHA 1905-1, "Management System Card-Individual," or Form FmHA 1905-5, "Management System Card-Individual (RH Only)," as appropriate, showing that such security has been retained.

(k) *Account record and case folder.* The account record and case folder will be established in accordance with FmHA Instructions 2033-A and 1905-A (available at any FmHA office).

[48 FR 200, Jan. 4, 1983, as amended at 50 FR 39964, Oct. 1, 1985; 51 FR 6393, Feb. 24, 1986; 52 FR 29175, Aug. 6, 1987; 53 FR 26590, July 14, 1988; 53 FR 44177, Nov. 2, 1988; 54 FR 39727, Sept. 28, 1989]

§ 1944.34 Interest credit.

(a) *General.* It is the policy of FmHA to grant interest credit on loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities.

(b) *Definitions*—(1) *Annual payment borrowers.* Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 1951-34, "Direct Payment Plan Change."

(2) *Monthly payment borrowers.* Borrowers who signed promissory notes providing for monthly payments.

(3) *Review period.* The review period for an annual payment borrower will be the months of October and November. The review period for a monthly payment borrower will be the second and third months prior to the anniversary date of the borrower's current Interest Credit Agreement.

(4) *Real estate taxes.* Real estate taxes for interest credit purposes means the amount of real estate taxes and assessments that will actually be due and payable on the dwelling and the dwelling site during the interest credit period, reduced by the amount of any tax exemption available to the borrower, regardless of whether such exemption is actually claimed. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans and others.

(c) *Approval authority.* Those FmHA officials who are authorized to approve Section 502 loans are also authorized to approve the Interest Credit Agreement.

(d) *Amount of interest credit.* (1) Loans other than FmHA loans qualified to be considered in the interest credit calculation include only those advanced for authorized Section 502 RH purposes and which are a lien against the FmHA security by virtue of a prior mortgage. Except as provided in paragraph (d)(2) of this section, the amount of interest credit granted will be the lesser of:

(i) The difference between 20 percent of the borrower's adjusted annual income and the sum of the annual installments due at the note interest rate on qualified loans plus the cost of real estate taxes and insurance, or

(ii) The difference between the annual installment due on the FmHA promissory notes eligible for interest credit and the amount the borrower would pay if the loan(s) were amortized at an interest rate of 1 percent.

(2) For repair and rehabilitation loans which meet the requirements of paragraph (f)(6) of this section, interest credit will be granted in an amount to achieve the following effective interest rates:

(i) For borrowers whose adjusted annual income is not more than $5,000, interest credit will be calculated to reduce the effective interest rate to 1 percent.

(ii) For borrowers whose adjusted annual income is more than $5,000, but not more than $7,000, interest credit will be calculated to reduce the effective interest rate to 2 percent.

(iii) For borrowers whose adjusted annual income is more than $7,000 but not more than $10,000, interest credit will be calculated to reduce the effective interest rate to 3 percent.

(3) Borrowers qualifying for interest credit assistance under both paragraphs (d) (1) and (2) of this section will be granted only the one type of interest credit assistance that is most beneficial to them. Interest credit on initial and subsequent loans will always be the same type. There is no provision for switching from one type of interest credit to the other.

(e) *Recapture.* At the applicant interview, the County Supervisor will advise all Section 502 RH applicants that interest credit is subject to recapture. Applicants who receive interest credit will be required to sign a "Subsidy Repayment Agreement" (Subpart I of Part 1951 of this chapter, Exhibit A) at the time the initial interest credit agreement is signed.

(f) *Eligibility.* To be eligible for interest credit, a borrower must qualify for a section 502 loan, must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans including credit sales.* Interest credit my be granted at loan closing if:

(i) The borrower's adjusted annual income at time of loan approval did not exceed the applicable low-income limit in Exhibit C of this subpart (available in any FmHA office).

(ii) The borrower's net family assets as defined in § 1944.2(n) of this subpart do not exceed $7,500 (maximum net family assets of $10,000 will be allowed for an elderly family as defined in § 1944.2(d) of this subpart) unless an exception is authorized. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets, particularly whether they are assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest credit. The District Director may authorize exceptions of the net family assets limitation up to $20,000. Cases recommended by the State Director for which the net family assets exceed $20,000 will be submitted to the National Office for authorization to grant interest credit.

(iii) The term of the loan is for 33 years (30 years for a manufactured home loan), unless authorized otherwise by the State Director based on complete documentation of the justifiable reasons on an individual case basis. Interest credit will not be granted on loans with a term of less than 25 years, except as provided in paragraphs (f) (4) and (6) of this section.

(iv) The loan was approved on or after August 1, 1968.

(v) The amount of interest credit will be $5 or more per month or $60 or more annually.

(2) *Subsequent loans.* Interest credit may be granted on subsequent loans which meet the requirements of paragraph (f)(1) of this section. If interest credit is presently being granted on the initial loan and the borrower's adjusted income does not exceed the moderate-income limit set forth in Exhibit C of this subpart (available in any FmHA office), it may also be granted on the subsequent loan if the term of the subsequent loan is 25 years or more.

(3) *Transfers.* Interest credit may be granted to a borrower assuming an RH loan provided the assuming party(ies) qualifies according to paragraph (f)(1) of this section.

(4) *Reamortization.* Interest credit may be granted on loans made as low- and moderate-income loans after reamortization under the following conditions:

(i) If the loan was eligible for interest credit prior to reamortization, interest credit may continue to be granted even though the term of the reamortization period is less than 25 years; or

(ii) If the loan was not eligible for interest credit prior to reamortization, the reamortized term of the loan must be 25 or more years and all other conditions of paragraph (f)(1) of this section must be met.

(5) *Existing loans.* Interest credit may be granted at any time after loan closing if:

(i) The requirements of paragraphs (f)(1) (ii), (iii), (iv), and (v) of this section are met.

(ii) The loan was approved as a "low or moderate" Section 502 loan on or after August 1, 1968.

(iii) The borrower's adjusted annual income does not exceed the low-income limit in Exhibit C of this subpart (available in any FmHA office).

(iv) The borrower requests interest credit, or the County Supervisor determines that interest credit is needed to enable the borrower to repay the loan. In the case of married borrowers, when one spouse has left the dwelling due to marital discord, interest credit based on the remaining spouse's income may be extended to the remaining spouse if:

(A) The remaining spouse is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(B) The FmHA loan account is put in the remaining spouse's name;

(C) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings, or one spouse has not been living in the dwelling for at least six months. Interest credit will not be granted if separation is due only to work assignment or military order; and

(D) The remaining spouse is informed and agrees that should the spouse begin to live in the dwelling, that spouse's income will then be counted toward annual income and interest credit may be reduced or cancelled.

(6) *Repair and rehabilitation loans.* Interest credit may be granted on section 502 RH loans made to repair or rehabilitate a dwelling already owned by the applicant provided the following conditions are met:

(i) The initial interest credit will be granted at the time of loan closing and the loan will be secured by a real estate mortgage;

(ii) The dwelling is, or will be, occupied by an eligible borrower after the loan is made;

(iii) The amount of the loan will not exceed $10,000, or be amortized for not more than 25 years;

(iv) The applicant's adjusted annual income does not exceed $10,000;

(v) The repairs will be made to bring a substandard dwelling up to the standards outlined in § 1944.16 (c); and

(vi) The net worth requirements in paragraph (f)(1)(ii) of this section are met.

(g) *Processing interest credit.* (1) *General.* The amount of interest credit for which a borrower may be eligible will be determined by use of Form FmHA 1944-6 or Form FmHA 1944-A6 as outlined in paragraph (d) of this section.

(i) *Determination of income.* The County Supervisor is responsbile for determining the borrower's annual and adjusted annual income as defined in § 1944.2, paragraphs (b) and (c) respectively, of this subpart. A borrower interview will be conducted in all cases for granting initial interest credit. Form FmHA 1910-5 will be used to verify the earnings from employment of all persons whose income is included in "Annual Income."

(ii) *Effective period.* Interest Credit Agreements on loans made to monthly payment borrowers will be for a 12-month period with the agreement extendable for an additional 12 months if the borrower's circumstances do not change. For annual payment borrowers the agreement will be in effect until the first December 31 after the effective date with the agreement renewable until the second December 31 after the effective date if the borrower's circumstances do not change. The effective date will be as indicated on the FMI for Form FmHA 1944-6.

(iii) *Partial year interest credit.* For an annual payment borrower with an initial installment less than a regular installment, and who will receive less than a full year of interest credit assistance, the interest credit granted will be a pro rata portion calculated on the number of months left in the current calendar year, including the month in which the loan is closed.

(iv) *Advances from the RHIF.* The repayment schedule for advances made from the Rural Housing Insurance Fund will be computed at the interest rate shown on the promissory note. However, interest will accrue and payments will be applied on the amount advanced at the reduced interest rate in effect at the time of payment.

(v) *Preparation of the transaction record.* For borrowers receiving interest credit, the following changes will be shown on Form FmHA 451-26, "Transaction Record," when prepared by the Finance Office:

(A) Interest rate field. The interest rate field of the form will continue to show the interest rate on the note. The Finance Office will compute the effective interest rate charged the borrower based on the amount of interest credit granted. The computed rate, rounded to the nearest ⅛ of a percent, will be shown as a footnote on the form as "Interest Rate reduced to %." Subsequent transactions will be applied to the loan by the Finance Office at the reduced interest rate until such time as renewal, change, or cancellation occurs.

(B) Daily interest accrual field. The daily interest accrual will be shown at the reduced interest rate and the interest will accrue at the same interest rate until such time as the interest credit is renewed, changed, or cancelled.

(C) Application of credit field. The initial transaction record form will not have an entry in the "Application of Credit" field. The Interest Credit Transaction Code for this method of processing interest credit will be 4 Z.

(D) Payment status field. The payment status field will not reflect the dollar amount of the interest credit granted. No entry will be made for monthly payment borrowers.

(E) Minimum amount due be date shown field. For annual payment borrowers, the amount of the installment, reduced by the amount of interest credit granted, will be shown. For monthly payment borrowers the word "monthly" will be entered in the space provided.

(2) *Initial and subsequent loans.* (i) *County Office action.* The County Supervisor will:

(A) Determine the borrower's adjusted annual income and document the calculations in the case file running record.

(B) Enter of Form FmHA 1940-1 the adjusted annual income, the estimated real estate taxes that will become due and payable during the first and second years of the agreement, and the amount of the annual property insurance premium for the dwelling.

(C) For initial loans approved with interest credit and closed under the multiple advance feature of the loan disbursement system outlined in Subpart A of Part 1902 of this chapter, further review of the borrower's financial status is not required unless the Interest Credit Agreement will be approved more than 90 days after the last "Verification of Employment," or there is evidence which indicates the borrower's financial status has changed significantly. If prior to approval of the Interest Credit Agreement the County Supervisor finds that the adjusted income has increased, interest credit will be granted on the basis of the borrower's new circumstances.

(D) Complete and submit a corrected Interest Credit Agreement to the Finance Office when the loan is closed, or at the amortization effective date, if the borrower's circumstances have changed so that the amount of interest credit would be increased or decreased by at least $5 monthly or $60 annually.

(ii) *Finance Office actions.* The Finance Office will:

(A) Enter the information concerning adjusted annual income, the estimated real estate taxes, and the insurance premium on Form FmHA 440-57.

(B) Calculate the amount of interest credit to be granted to the borrower. The amount of interest credit will be determined from the information initially shown on Form FmHA 1940-1.

(C) Prepare and mail Form FmHA 1944-A6 to the County Office when the final loan check is issued. Upon receipt, the form will be competed and a copy returned to the Finance Office only when indicated on the form.

(D) Prepare and issue payment cards to the County Office.

(3) *Reamortization, credit sales and transfers.* Interest credit to a borrower whose loan is being reamortized, or a borrower who assumes an RH loan or purchases property from inventory will be calculated by the County Office on Form FmHA 1944-6. A copy of Form FmHA 1944-6 will be forwarded to the Finance Office along with the copy of the Reamortization Agreement, Advice of Mortgaged Real Estate Sold, or Assumption Agreement. The Finance Office will issue payment cards to the County Office.

(4) *Existing loans.* Interest credit granted in accordance with paragraph (f)(5) of this section can be processed at any time in the same manner as interest credit on initial loans, except that the County Office will complete Form FmHA 1944-6 and calculate the amount of interest credit assistance the borrower will receive. A copy of Form FmHA 1944-6 will be used to send interest credit information to the Finance Office. The daily interest accrual will be reduced as of the effective date entered on the form or as of the date the last cash credit was made to the account, whichever is later.

(h) *Interest credit modification.* (1) *Before expiration.* When approving a change in interest credit assistance before the expiration of a current Interest Credit Agreement in Accordance with paragraph (i)(3) of this section, the County Supervisor will again interview the borrower, determine the follower's adjusted annual income and document the findings in the case file running record. A Form FmHA 1944-6 will be completed in accordance with the FMI and a copy of the form will be forwarded to the Finance Office. The Finance Office will adjust the daily interest accrual as of the date entered on the form or as of the date of the last cash credit made to the account, whichever is later.

(2) *Correction of interest credit agreement.* When an error by an FmHA employee results in too little interest credit being granted, a corrected agreement will be prepared effective the date of the error, if the error results in the granting of $5 or more per month, or $60 or more per year less interest credit than the borrower was eligible to receive. In such cases, a Form FmHA 1944-6 showing the proper amount of interest credit which the borrower is entitled to receive, together with written authorization from the State Director to reapply any affected payments, will be submitted to the Finance Office to replace the incorrect agreement. The effective date of the corrected agreement will be the same as the agreement in error. The notation "Corrected in accordance with § 1944.34" will be entered on the face of the form. The Finance Office will cancel the incorrect Interest Credit Agreement as of its effective date. Payments made under the previous agreement will be reapplied at the adjusted interest rate of the new Interest Credit Agreement.

(3) *Interest credit renewal.* Pursuant to delegations of procurement authority included in FmHA Instruction 2024-A (available in any FmHA Office), State Directors are authorized to enter into contracts for the processing of interest credit renewals. Contractor will not be given the authority to approve or disapprove Interest Credit Agreements.

(i) *Initiation of renewal action.* At the beginning of the annual review period, the Finance Office will mail to the County Office a list of borrowers whose Interest Credit Agreements are to be reviewed, together with a package to be mailed by the County Supervisor to each borrower or to be picked up at the County Office by the contractor for interest credit renewals. The package will contain Form FmHA 1944-A6 (3 parts with carbon interleaved). If the renewal Form 1944-A6 is for the first year review period following the effective date of the agreement, it will contain the following legend:

"Subsidy for (*ensuing year*) of $__________. Is this correct? [ ]"

The County Supervisor or the contractor will complete Form FmHA 1944-1, "Interest Credit Agreement

Renewal," according to the FMI for the form and insert it in the package together with two Forms FmHA 1910-5. Two envelopes which have been preaddressed with the County Office address or the address of the contractor, if applicable, will be inserted in the package to be used by the employer(s) to mail the Verification of Employment form(s) to the County Office or to the contractor. Postage for these envelopes will be provided as set forth in § 1944.26 (a)(5) of this subpart.

(ii) *Borrower responsibility.* Upon receipt of the package, the borrower will give one copy of the Verification of Employment form to the employer or employers of each member of the household who has income to be considered. A stamped envelope will be provided each employer to facilitate the mailing of the Verification of Employment form directly to the County Office or to the contractor, if applicable. The borrower will also complete part II of the Interest Credit Agreement from (leaving carbon intact), sign the original form and bring the original and all copies to the County Office or to the office of the contractor.

(iii) *County Office actions.* The County Supervisor, or designee, will:

(A) Maintain the list of borrowers as a record of Interest Credit Agreements processed and sent to the Finance Office.

(B) Conduct an interview with the borrower to review the information on Forms FmHA 1944-A6 and 1910-5 for completeness and accuracy. The interview should, whenever possible, be a face-to-face contact.

(C) Determine the adjusted annual income and document the calculations in the case file running record.

(D) For the first year review period following the effective date of the agreement, place an "X" in the box of the Finance Office legend on the renewal Form FmHA 1944-A6 if there is no change in the amount of interest credit. This will extend the agreement for one year. If there is a change, complete the Interest Credit Agreement and send a copy of the agreement to the Finance Office. For the second review period following the effective date of the agreement, an Interest Credit Agreement will be completed and a copy of the agreement sent to the Finance Office. If an annual note installment borrower is not eligible for interest credit, enter "O" in the blocks which indicate the amount of interest credit and send a copy of the agreement to the Finance Office. For monthly note installment borrowers not eligible for interest credit a copy of the agreement need not be sent to the Finance Office.

(E) If the Form FmHA 1944-A6 is multilated or unusable, transfer all information preprinted on the form to a new Form FmHA 1944-6 to be signed by the borrower and submit the completed form to the Finance Office.

(F) Retain the original of the Interest Credit Agreement and return the other copy to the borrower.

(G) Notify by letter borrowers not eligible for continued interest credit and those whose interest credit has been reduced of the amount of their revised payments. The letter must notify the borrower of the right to appeal as outlined in § 1944.34(1). A new Form FmHA 440-9 will be obtained when needed.

(iv) *Finance Office actions.* The Finance Office will:

(A) Upon receipt of Form FmHA 1944-A6 fron the County Office, send the County Office a new set of payment cards.

(B) Before the end of the review period, send the County Office a list of annual installment borrowers for whom a renewal Interest Credit Agreement has not been received. The County Office staff will place a checkmark in the appropriate column of the list to indicate those borrowers who are no longer eligible for interest credit or whose agreements will not be renewed. The original of the completed list will be retained in the County Office and a copy returned to the Finance Office.

(v) *Processing interest credit renewals not received during the review period.* The County Supervisor may approve interest credit renewals not completed during the review period. They will be handled as follows:

(A) The amount of interest credit assistance granted will be based on the borrower's current annual income. The effective date of the Interest Credit Agreement will be as indicated on the FMI for Form FmHA 1944-6.

(B) Payments made by the borrower after the expiration date of the previous Interest Credit Agreement will be applied at the note interest rate until the Finance Office receives a new Form FmHA 1944-6.

(C) Upon receipt of Form FmHA 1944-6, the Finance Office will reduce the daily interest accrual in accordance with the following conditions and limitations:

(*1*) If failure to renew was due to error or oversight by FmHA, the State Director will authorize the Finance Office to reduce the interest accrual as of the effective date entered on the form and reverse and reapply payments processed after the effective date. Such authorization must be in writing.

(*2*) In all other cases the Finance Office will reduce the daily interest accrual as of the effective date entered on the form or as of the date of the last cash credit made to the account, whichever is later.

(i) *Eligibility review.* The eligibility of those borrowers currently receiving interest credit will be reviewed as follows:

(1) *Annual review.* The eligibility of borrowers will be reviewed annually during the review period.

(i) If the borrower's net worth increases above the applicable eligibility limit, interest credit may nevertheless be renewed unless the increase is sufficient to enable the borrower to graduate to another source of credit.

(ii) Interest credit will not be renewed if the amount of interest credit for which the borrower qualifies is less than $5 monthly or $60 annually.

(A) The amount of interest credit for which the borrower qualifies is less than $5 monthly or $60 annually, or

(B) The borrower's adjusted annual income exceeds the moderate-income limit set forth in Exhibit C of this subpart (available in any FmHA office).

(iii) Interest credit will not be renewed if the borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design, and cost for previously occupied homes as compared to other housing in the locality for low- and moderate-income families.

(2) *Renewals not completed during the review period.* When the borrower's renewal Interest Credit Agreement is not completed during the review period, it will be processed in accordance with § 1944.34(h)(3)(v).

(3) *Change in borrower's circumstances.* The County Supervisor is not responsible for monitoring whether a borrower's income, family size, real estate taxes, or insurance costs have changed after an Interest Credit Agreement is approved. If, however, it becomes known that the borrower's circumstances have changed significantly, the County Supervisor will take action in accordance with the following:

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's adjusted income has increased to the level where the interest credit is less than $5 monthly or $60 annually, the interest credit will be canceled effective the date the County Supervisor becomes aware of the situation. The borrower will be notified in accordance with paragraph (l) of this section.

(ii) *Decreased adjusted income.* Changes in interest credit will not be made unless the borrower's income is reduced by at least 30 percent. The 30-percent reduction will be from the income on which the current interest credit agreement is based. If the change is determined within 3 months prior to the anniversary date of the agreement currently in effect, the change will be effective on the anniversary date.

(j) *Unauthorized interest credit.* When it is determined that a borrower has received interest credit to which he/she was not entitled (unauthorized interest credits), the case will be serviced according to Subpart M of Part 1951 of this chapter.

(k) *Cancellation of interest credit agreements.* (1) *Reasons for cancellation.* An existing Interest Credit Agreement will be cancelled whenever:

(i) The borrower has never occupied the dwelling and FmHA will not continue with the loan.

(ii) The borrower ceases to occupy the dwelling.

(iii) The borrower sells or conveys the title to the property.

(iv) The borrower has received improper interest credit as outlined in § 1944.34(j) and a corrected Interest Credit Agreement will not be submitted.

(v) The borrower has an increase in income as outlined in § 1944.34(i)(3)(i) and is no longer eligible for interest credit.

(vi) The borrower has enlarged or improved the dwelling or added related facilities so that the housing exceeds modest standards for size, design and cost for previously occupied homes compared to other housing in the locality for low- and moderate-income families.

(vii) The security property is acquired by FmHA.

(2) *Effective date of cancellation.* The effective date of cancellation for paragraph (k)(1)(i) of this section will be date of loan closing. The effective date of cancellation for paragraphs (k)(1) (ii), (iii) and (iv) of this section will be the date on which the earliest action occurs which causes the cancellation. If the date cannot be determined, the date on which the County Supervisor became aware of the situation will be used. The effective date of cancellation for paragraph (k)(1) (v) and (vi) of this section will be the date on which the County Supervisor became aware of the situation. The effective date of cancellation for paragraph (k)(1)(vii) of this section will be the date the property is acquired by FmHA (the same date reported on Form FmHA 465-6, "Advice of Mortgaged Real Estate Acquired.") When an account has been accelerated and none of the conditions outlined in paragraph (k)(1) of this section exist, the Interest Credit Agreement will remain in effect until the final foreclosure action is completed. However, if the existing agreement expires before the foreclosure action is completed, an interest credit renewal agreement will not be prepared. If foreclosure action is dismissed, withdrawn or terminates without sale of the property or payment of the loan in full, a renewal agreement will be prepared with an effective date as of the expiration of the previous agreement. After the determination of the effective date of cancellation, Form FmHA 1944-15, "Interest Credit Agreement Cancellation," will be completed in accordance with the FMI. The FmHA field office will process the interest credit agreement cancellation via the FmHA field office terminal system.

(l) *Applicant or borrower notice of right to appeal.* All applicants or borrowers who request and are denied interest credit or whose interest credits are reduced, cancelled, or not renewed, will be notified of their appeal rights as required by § 1900.56 of Subpart B of Part 1900 of this chapter except when:

(1) Interest credit is denied because of confirmed income that is above FmHA published limits, or

(2) Interest credit is reduced because of confirmed income increases.

(m) *Submission to National Office.* The State Director may submit to the National Office for determination by the Administrator or a delegate any proposed transaction in which the conditions prescribed in the foregoing paragraphs of this section cannot be met, and it is determined that interest credit is necessary to avoid extreme hardship to the family or prevent foreclosure action. This paragraph is primarily intended to be used for those cases in which the granting of interest credit is necessary for the borrower to retain a dwelling for the borrower's own use, and there are no other means to do so. The State Director will submit to the National Office the County Office files together with full facts, justification, and recommendation.

[48 FR 200, Jan. 4, 1983]

Editorial Note: For Federal Register citations affecting § 1944.34, see the List of CFR Sections Affected in the Finding Aids Section of this volume.

§§ 1944.35—1944.36 [Reserved]

§ 1944.37 Subsequent Section 502 loans.

Subsequent Section 502 loans may be made to present borrowers for the same purposes and under the same conditions and limitations as initial loans, except as provided in this section.

(a) The subsequent loan will be processed in the same manner as initial loans, except that a new appraisal report will be required in accordance with § 1944.24 only when real estate will be taken as security and at least one of the following conditions exists:

(1) The property was not appraised in connection with the initial loan.

(2) The latest appraisal report of the real estate is over two years old.

(3) The physical characteristics of the property have changed significantly.

(4) The County Supervisor or loan approval official is uncertain of the adequacy of the security and requests a new appraisal report.

(5) The subsequent loan is in connection with a transfer of an existing loan subject to subsidy recapture in accordance with Subpart I of Part 1951 of this chapter.

(b) A subsequent RH loan may be made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loan or loans does not exceed $2,500. Applicants for such loans must meet the requirements of § 1944.18(b)(1).

(c) When a real estate mortgage is required in connection with a subsequent RH loan, any outstanding RH notes will be described in the mortgage unless an exception can be made in accordance with Exhibit A, paragraph II F, of FmHA Instruction 427.1 (available in any FmHA office).

(d) The subsequent loan will bear interest at a rate determined in accordance with Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(e) When necessary to settle a divorce action, a subsequent loan may be made to permit the remaining borrower, if eligible, to purchase the equity of the departing spouse.

(f) When an area designation has been changed from rural to non-rural, subsequent RH loans may be made only in accordance with the provisions of § 1944.10(g)(4).

(g) The loan approval official may authorize reamortization of a prior RH loan at the time a subsequent loan is made in those cases in which it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. It will be processed in accordance with § 1951.314 of this chapter.

§ 1944.38 Mutual self-help housing loans.

Low income applicants may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior authorization of the State Director. If an organization applies for a Technical Assistance (TA) grant, the District Director will submit form AD-625, "Application for Federal Assistance (Short Form)," and all related information concerning the technical assistance grant to the State Director. If it is determined that the technical assistance grant has been approved for funding, the State Director may issue written authorization for the County Supervisor to approve Mutual Self-Help Housing Loans. Exhibit E, "Mutual Self-Help Housing Guidelines," will be used as a guide for developing self-help projects and counseling with participating families. Exhibit E-1, "Membership Agreement," and Exhibit E-2, "Promissory Note," will be used as explained in Exhibit E. The county Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction.

§ 1944.39 RH loans to FmHA employees and loan closing officials.

FmHA employees, County Committee members, and loan-closing officials, or their spouses may receive a Section 502 RH loan subject to the provisions of this subpart and the following conditions:

(a) The application will be submitted to the County Office in the usual manner. Written evidence indicating the applicant's inability to obtain the needed credit will be included. The County Office will obtain the verification of employment and credit report and submit the application and related information to the District Director for review. The District Director will forward the applicant's docket, along with written recommendation concerning the applicant's eligibility, to the State Director for eligibility determination.

(b) The State Director will determine the eligibility of the applicant. If eligible, the applicant will be notified and the docket will be returned to the District Director for processing. If the applicant is determined ineligible, the State Director will notify the applicant in writing and will provide the applicant all information required by § 1910.6(b) of Subpart A of Part 1910 of this chapter.

(c) The application will be retained in the County Office and will be processed in the same order as other applications. The District Director will be notified when the application is in order for processing and will be responsible for the complete loan processing.

(d) If the loan applicant works outside the county in which the application is filed, the District Director may permit authorized County Office staff to perform the appraisal function. In all other cases the District Director will appraise the property or have it appraised by a qualified FmHA appraiser from outside the County Office area in which the loan is to be made. The completed loan docket together with the District Director's written recommendation will be submitted to the State Director for consideration of approval.

(e) If the applicant is an employee in the District Office, the State Director will designate another District Director to process the application.

(f) The State Director must, before approving the loan, determine that the applicant has not been and will not be given any advantage because of the FmHA relationship and the making of a loan will not result in a conflict of interest under FmHA Instruction 2045-BB (available in any FmHA office). The dwelling may not exceed the needs of the applicant or be excessive in size, design, or cost when compared to other FmHA financed dwellings in the area.

(g) If the loan is approved, the borrower's case file will not be maintained or serviced in the office where the borrower is or will be employed. If the property is in the area serviced by the office of employment the State Director will designate another District or County Office to service the loan.

(h) If the loan involves any type of construction, the inspections for FmHA will be made by the District Director or another member of the District Director's staff as designated by the District Director. Under no circumstances will the employee receiving the loan make the inspections for FmHA.

(i) Loans, credit sales, or assumption agreements *will not* be approved under this authority for any of the following purposes:

(1) Purchase of inventory property.

(2) Purchase of a dwelling from an RH borrower.

(3) Purchase of FmHA security property being sold at foreclosure sale.

§ 1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair (except no RHD loan may be made on a manufactured home unless the unit is already financed with a section 502 rural housing loan) or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm or lightning.

(a) *Eligibility requirements.* (1) The applicant must meet the requirements of § 1944.8 and § 1944.9.

(2) Nonfarm applicants must have occupied the dwelling as their permanent residence.

(3) The loss by a nonfarm applicant was not the result of a major disaster designated by the President as eligible for individual assistance or a natural disaster designated by the Administrator of the Small Business Administration.

(4) The loss by a farmer was not the result of a major disaster designated by the President as eligible for individual assistance or a natural disaster designated by the Secretary of Agriculture.

(5) The loan application must be filed within 12 months after the date the loss occurred.

(6) The applicant must use available assets, including insurance loss payments, and other assistance, to the extent available, to repair or replace the damaged or destroyed buildings.

(b) *Repair or replacement of buildings.* Repair or replacement of any damaged or destroyed building must be consistent with the basic Section 502 loan policies and Subpart G of Part 1940 of this chapter. Changes may be made in the building, but in any case the repaired or replaced building should not be significantly larger or more costly than the original building except as necessary to provide which is adequate but modest. Any new dwelling constructed must meet the limitations established by § 1944.16 of this subpart.

(c) *Interest rate and source of funds.* (1) RHD loans will be made at an interest rate of 5 percent. Interest credit will not be granted for RHD loans.

(2) Insured loan funds will be used for RHD loans.

(d) *Approval authorization.* The State Director, County and Assistant County Supervisors are authorized to approve RHD loans in accordance with Subpart A of Part 1901 of this chapter for Section 502 RH loans.

(e) *Deferred payments.* The initial payments of principal and interest, or principal only, may be deferred so as not to become due until as late as the third January 1 for annual payment notes, or the third anniversary date of the note for monthly payment notes, subject to all of the following conditions:

(1) The applicant, as a result of the loss suffered from the disaster, has had a substantial loss of income; or debts, including the proposed RHD loan, have increased substantially as a result of the disaster.

(2) The income loss or increase in debts must be sufficiently great so that the applicant will not likely be able to pay in full the installments that ordinarily would be due during the proposed deferment period and also meet other obligations.

(3) The applicant's other debts must be adjusted by reduction, reamortization, extension, or other means to the extent possible by negotiation with other creditors.

(4) The applicant's income will be sufficient after the deferment period to enable the applicant to meet the payments on the RHD loan and all other obligations.

(f) *Form FmHA 1940-1.* The appropriate assistance code number will be entered in the space provided to indicate the nature of the loss.

[48 FR 200, Jan. 4, 1983, as amended at 51 FR 41607, Nov. 18, 1986; 53 FR 36267, Sept. 19, 1988]

§§ 1944.41—1944.43 [Reserved]

§ 1944.44 Borrower graduation.

County supervisors must stay currently informed about credit from other sources including availability of funds, interest rates, terms and debt/value ratios required. Borrowers will be asked to refinance RH loans when FmHA determines that credit likely will be available at rates and terms prevailing in the area and on terms which the borrower can reasonably be expected to meet. Borrowers will be required to apply for a refinancing loan from one or more locally active lenders when asked and, if approved by a lender, accept such credit to pay the FmHA loan in full. Graduation reviews will be conducted in accordance with Subpart F of Part 1951 of this chapter.

[48 FR 200, Jan. 4, 1983, as amended at 48 FR 40203, Sept. 6, 1983]

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder, dealer-contractor or seller that a dwelling to be built, rehabilitated, or developed as a manufactured home package and offered for sale will be acceptable for purchase by qualified RH loan applicants if built in accordance with FmHA approved plans and specifications and priced at not more than a specified maximum amount. The conditional commitment does not reserve funds for a loan nor does it assure that the area the dwelling is in will remain rural or that an eligible loan applicant will be available to buy the dwelling.

(b) *Eligibility.* To be eligible for conditional commitments, the builder, dealer-contractor, or seller must:

(1) Be the owner as defined in § 1944.15, before construction is started, of the site on which the dwelling is located or to be built, except as indicated in Subpart G of Part 1822 of this chapter (paragraph VII L of FmHA Instruction 444.8).

(2) Have the experience and ability to complete the type of proposed work in a competent and workmanlike manner.

(3) Be financially responsible and have the ability to finance or obtain financing for the proposed housing or rehabilitation.

(4) Comply with the requirements of Subpart E of Part 1901 of this chapter and all applicable laws relating to equal opportunity.

(5) Plan to build or rehabilitate dwellings which will qualify for purchase by RH applicants and which will be in compliance with all applicable laws, ordinances, and codes.

(6) Have the legal capacity to enter into the required agreements and the actual capacity to carry them out.

(c) *Limitations.* (1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the appraised value minus customary closing costs.

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed, new manufactured homes, or existing homes (other than manufactured) to be rehabilitated.

(3) Conditional commitments will not be issued after construction has started.

(4) Number of conditional commitments.

(i) The total number of conditional commitments issued in any locality will not exceed the number of homes for which there is an immediate and ready market in that locality.

(ii) The number of houses on which conditional commitments will be outstanding to a commitment applicant at any time will not exceed 15 in any one county unless authorized by the State Director after the State Director:

(A) Determines that a larger number of commitments must be made to meet the immediate housing needs in the area;

(B) Determines that authorizing more than 15 commitments to one commitment applicant will not reduce the participation of small volume builders in the Rural Housing program; and

(C) Provides guidelines to the County Supervisor to assure that all builders active in the area have equal opportunity to obtain more than 15 conditional commitments.

(iii) The total number of conditional commitments outstanding in the area served by a County Office will not exceed the number on which the County Supervisor can reasonably expect to be able to approve RH loans within 3 months after the houses covered by the commitments are completed, considering the availability of loan funds and the number of applications in the County Office.

(5) The period of the conditional commitment will be for 12 months from the date of issue. The commitment may be extended for an additional 6 months if justified because of (1) unexpected delays in construction caused by such factors as bad weather or materials shortages, or (2) marketing difficulties.

(6) When five or more conditional commitments have been issued to one recipient during a 12 month period, an affirmative marketing plan will be required in accordance with § 1901.203 (c) of Subpart E of Part 1901 of this chapter.

(d) *Conditional commitments involving packaging of applications.* A conditional commitment may be made to a builder or dealer-contractor who packages a Rural Housing application for an applicant to buy the property. In cases when the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met to avoid misunderstanding of FmHA's obligation to either the RH applicant or the conditional commitment applicant:

(1) The conditional commitment will not be approved until the RH loan has been approved.

(2) Construction will not begin until the County Office has received notice from the Finance Office that funds are obligated for the RH loan.

(3) The RH loan will be closed only after the dwelling is constructed or the rehabilitation completed and final inspection has been made.

(e) *Fees.* Each commitment applicant will pay an application fee at the time an application is submitted for a conditional commitment. The fee for each dwelling will be:

(1) For proposed construction of new dwellings—$65.

(2) For existing dwellings to be rehabilitated—$50.

(f) *Processing applications.* (1) Applications for conditional commitments will be submitted on Form FmHA 1944-36, "Application for Conditional Commitment." Attachments as outlined on the form will be included for each individual dwelling for which a conditional commitment is requested.

(2) *Transmittal of fees.* The County Supervisor will transmit application fees on Form FmHA 451-2, "Schedule of Remittances." The payment will be handled with all other payments for the day in accordance with Subpart B of Part 1951 of this chapter and the FMI for Form FmHA 451-2.

(3) *Evaluation of applications.* The County Supervisor will take the following actions in the order specified:

(i) Determine whether the commitment applicant meets the requirements of paragraphs (b) and (c) of this section.

(ii) Determine whether the dwelling and site meet the requirements of this subpart and Subpart A of Part 1924 of this chapter and will comply with all local codes and ordinances. The use of construction contracts with conditional commitments is optional. The property must also meet the requirements of Subpart C of Part 1924 of this chapter and Subpart G of Part 1940 of this chapter.

(iii) If the commitment applicant and the dwelling and site have qualified, an appraisal will be made in accordance with Subpart C of Part 1922 of this chapter.

(4) *Failure of applicant or dwelling to qualify.* In case any commitment applicant or dwelling does not qualify for a conditional commitment, the documents attached to the application will be returned to the commitment applicant with a letter explaining why the application was not approved. If the application is denied for failure to meet the requirements of paragraph (b) (2) or (3) of this section, notice of appeal rights will be given as required by § 1900.56 of Subpart B of Part 1900 of this chapter.

(i) The application fee will be refunded if for any reason preliminary inspection of the property or investigation of the commitment applicant indicates that a conditional commitment cannot be issued. For example, the property might be located in a nonrural area or the dwellings may not be of a type that the FmHA can appropriately finance. If a refund is required, a memorandum should be sent to the Finance Office indicating the commitment applicant's name together with the date and amount of fees paid. The memorandum should also indicate the number of commitments being denied and amount of fees to be refunded.

(ii) Application fees will not be refunded for any property on which the appraisal has been made.

(5) *Conditional commitment approval.* The State Director, District Director, County and Assistant County Supervisors are authorized to approve conditional commitments provided the commitment price does not exceed the loan approval authority for section 502 RH loans as outlined in Subpart A of Part 1901 of this chapter. If the conditional commitment is granted, the loan approval official will complete and sign Form FmHA 1944-11, "Conditional Commitment." When a qualified applicant applies for a loan to buy a dwelling on which a conditional commitment has been issued, the application file will be transferred to the conditional commitment folder.

(g) *Inspections.* Inspections of work to be done will be performed in accordance with Subpart A of Part 1924 of this chapter. Failure to correct any deficiencies or to complete the work in accordance with plans and specifications approved by FmHA will be a basis for cancelling the conditional commitment.

(h) *Changes in plans, specifications, and/or commitment price.* The County Supervisor is authorized to approve changes in plans and specifications that are consistent with the applicable development standards and Exhibits D and J (for manufactured homes) of Subpart A of Part 1924 of this chapter. If the changes are requested after an option has been executed by a rural housing applicant, the change will be approved only after the applicant and the commitment holder submit a written request for approval. If a change will reduce or increase the appraised value of the property, the County Supervisor will revise the commitment price and inform the commitment holder. Also, in cases when the holder of a commitment reports to the County Supervisor that costs associated with the construction or repair of a dwelling have increased, the approval official may increase the commitment price provided the property has not been optioned by an RH applicant, and the County Supervisor determines that the increase is clearly justified, the circumstances causing the price increase were beyond the commitment holder's control, and the value of the property is adequate to permit the increased commitment price. A revised appraisal report will be prepared. The conditional commitment will be revised, initialed, and dated by the person authorizing the change.

(i) *Cancellation of outstanding conditional commitments.* (1) Conditional commitments may be cancelled when construction of the dwelling is not begun within 60 days after the commitment is issued.

(2) Conditional commitments will be cancelled when construction is not in accordance with all FmHA requirements, approved plans, specifications, or the applicable development standards, and the builder refuses to make corrections necessary for compliance.

(j) *Folder maintenance.* Documents prescribed in this subpart will be filed in accordance with FmHA Instruction 2033-A (available in any FmHA office).

(k) *Builder's warranty.* The builder dealer-contractor or seller, as appropriate, will execute Form FmHA 1944-19, "Builder's Warranty," (manufactured home warranty will be in accordance with Exhibit F, paragraph XIII of this subpart) or provide a 10-year isured warranty when construction is completed or the loan to buy the dwelling is closed.

[48 FR 200, Jan. 4, 1983, as amended at 48 FR 7159, Feb. 18, 1983; 51 FR 41607, 4160 Nov. 18, 1986; 51 FR 44899, Dec. 15, 1986; 5 FR 8036, Mar. 13, 1987; 52 FR 19301, Ma 22, 1987; 53 FR 36267, Sept. 19, 1988]

§ 1944.46 Construction financing for builders by private credit sources.

(a) The purpose of this section is to provde a method by which a builder may be able to obtain construction credit from commercial sources of credit. I may eliminate the need to use a supervised bank account and also eliminate the need for the borrower to make payments on the loan during construction.

(b) This method may be used under the following conditions:

(1) A conditional commitment has been or will be issued, an RH loan approved, and funds obligated for the applicant in accordance with § 1944.4 or

(2) The applicant owns a building site and will contract the construction or improvement of the building or buildings. In such a case:

(i) The applicant will retain ownership of the site and not convey title to the builder, and

(ii) The lender providing the construction financing will not take a mortgage on the site owned by the applicant or otherwise require the applicant to secure the construction loan.

(c) This method may not be used if the RH loan is made in participation with an FO or an individual SW loan.

(d) Loan docket forms will be prepared in accordance with § 1944.30 of this subpart. Applicants who own the building site will be required to obtain and submit to the County Supervisor preliminary title evidence in accordance with Part 1807 of this chapter

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(FmHA Instruction 427.1). Satisfactory title or leasehold interest in the property must be confirmed before execution of Form FmHA 1924-6, "Construction Contract," and Form FmHA 444-16, "Notice of Loan Approval."

(e) When Form FmHA 440-57 is received from the Finance Office, the County Supervisor will complete and sign an original and one copy of Form FmHA 444-16. The original of Form FmHA 444-16 will be given to the builder and a copy will be retained in the loan docket.

(f) The builder may present Form FmHA 444-16, Form FmHA 1944-11, "Conditional Commitment," Form FmHA 440-34, or Form FmHA 1924-6, as appropriate, to a commercial lender to obtain construction financing. The County Supervisor will make no commitments to the lender except as indicated on the above forms.

(g) The required inspections will be made by FmHA or a firm or company that will provide a 10-year insured warranty. In all cases the final inspection will be made by FmHA. Copies of Form FmHA 1924-12, "Inspection Report," will be provided to the builder and, if requested, to the commercial lender.

(h) The lender is responsible for determining the amount that will be advanced to the builder under the construction financing arrangement, and for determining any measures necessary to protect its interest.

(i) When construction is completed, the loan will be closed in accordance with Subpart A of Part 1807 of this chapter (FmHA Instruction 427.1), usually within 10 days after satisfactory completion of construction.

[48 FR 200, Jan. 4, 1983, as amended at 52 FR 8036, Mar. 13, 1987]

§ 1944.47 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of applicants/borrowers or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Assistant Administrator, Housing. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, and/or impact on the applicant, borrower, or community, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

[51 FR 11299, Apr. 2, 1986, and 52 FR 9649, Mar. 26, 1987]

§§ 1944.48—1944.49 [Reserved]

§ 1944.50 OMB control number.

The collection of information requirements in this regulations have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0059.

[48 FR 40698, Sept. 9, 1983]

EXHIBITS TO SUBPART A

EXHIBIT A—INFORMATION REQUIRED TO PACKAGE APPLICATIONS FOR SECTION 502 RURAL HOUSING LOANS

I *General Information:* Persons or organizations that want to assist applicants in submitting applications to the Farmers Home Administration FmHA) should first meet with the County Supervisor. If these discussions indicate that the person or organization is capable of satisfactorily delivering complete information about applicants and houses that are likely to qualify for Rural Housing (RH) loans, the County Supervisor will review in detail the information that is needed and the processing steps required in completing an RH loan. The County Supervisor will provide assistance and guidance to all packagers in obtaining the required information. The following FmHA forms and this exhibit may be provided to prospective packagers as needed:

A Form FmHA 1944-12, "Rural Housing Loan Application Package."

B Form FmHA 410-4, "Application for Rural Housing Assistance (Non Farm Tract)."

C Form FmHA 410-1, "Application for FmHA Services."

D Form FmHA 1910-5, "Request for Verification of Employment."

E Form FmHA 1924-2, "Description of Materials."

F Form FmHA 440-34, "Option to Purchase Real Property."

II *Information Packager or Applicant Must Provide.*—A *Information to be submitted for all applicants.*

1 The applicant should complete the appropriate application form (Form FmHA 410-1 or 410-4).

a All information must be complete and accurate.

b If the applicant has business income, the current operating statement must be attached.

c The applicant must date and sign the application form.

2 Form FmHA 410-5 is used to check employment and income of applicants. The form should be mailed to the employer to be completed and returned directly to the County Office. FmHA will not provide franked envelopes to a packager for this purpose.

3 In cases where it appears that the applicant has sufficient income or assets to qualify for housing credit from another source, a diligent effort must be made to obtain such credit from at least two lenders who customarily make long-term housing loans in the area. If such lenders are unable to provide the credit needed, their written response stating why they cannot assist the applicant should be included in the loan package.

4 The information specified in paragraphs II B or II C of this Exhibit, whichever is applicable, will be submitted. In case FmHA has issued a conditional commitment on the property, information on the house will be on file in the County Office and need not be resubmitted.

5 If a house to be purchased is under construction, the loan will not be closed until construction is completed. In such a case the information in paragraph II C of this Exhibit will be submitted.

B *Information needed for loans to purchase new homes or to build or rehabilitate homes.* The information requested on the front page of Form FmHA 1944-36 will be submitted along with the completed form. This applies regardless of whether a conditional commitment is being requested in connection with the package. Additional information required for manufactured homes is listed in Exhibit F, paragraph XVIII of this subpart.

C *Information to be submitted for loans to buy existing homes.* 1 Form FmHA 1944-12 "Rural Housing Loan Application Package."

2 A signed or certified copy of an option on the property. The option must provide that any payments made by the applicant will be refunded if the loan cannot be made. Form FmHA 440-34, may be used for this purpose.

3 A termite certification whenever required.

4 In case major improvements are involved, submit three sets of complete drawings and specifications of the work that must be done, and a contractor's bid or a reliable cost estimate.

5 If the house qualifies as an existing home, is less than a year old, and an individual water or sewage system is involved, include a certification by the builder that the house and any water and waste disposal system have been or will be built or installed in accordance with the local building codes and plans and specifications. Such plans and specifications will also be submitted. Evidence of approval by health authorities having jurisdiction in the area also will be included. If the house is a year or more old, the County Supervisor will determine that the water and/or sewage system is functionally adequate and that the house meets FmHA requirements.

6 Direction map to the property.

7 Plot plan drawn to scale showing house location and related facilities.

III *Review and Acceptance of Completed Package:* During the initial discussions with packagers, the packager should understand the necessity for, and agree that, the loan packages will be assembled in the order shown on Form FmHA 1944-12 before they are delivered to the County Office. Form FmHA 1944-12 must be signed by the packager and be included with the materials submitted; otherwise, the packaged application will not be accepted. The County Supervisor will review each loan package when it is received and request any additional information needed. An affirmative fair housing plan will be submitted in accordance with § 1901.203 (c) of Subpart E of Part 1901 of this chapter. The County Supervisor will determine eligibility according to Subpart A of Part 1910 of this chapter but will not proceed with the processing of the loan until the applicant has been interviewed. A personal interview will be conducted by an FmHA employee with all applicants before approval of the requested loan in accordance with § 1944.26(d).

A If the applicant appears to be qualified and all needed material is available, the County Supervisor will process the application in accordance with the regulations.

B If a loan can be approved, the County Supervisor will notify the applicant including any requirements that must be met prior to closing the loan. If for any reason a loan cannot be made, the County Supervisor will notify the applicant and the packager. If the loan is denied because the applicant is determined ineligible the applicant will be notified in accordance with § 1910.6 of this chapter.

IV *Packagers' Responsibilities:* Packagers should fully understand their responsibilities in helping applicants to assemble their RH loan applications and that no fees may be charged for providing this service. Packagers must also comply with the requirements of Subpart E, Part 1901 of this chapter, "Civil Rights Compliance Requirements", and the Equal Credit Opportunity Act as provided in § 1910.2 of this chapter.

V *District Directors' Review of Loans Originated by Application Packagers:* District Directors are responsible for reviewing the file of a representative number of borrowers whose RH applications were submitted to the County Office by a packager. At least 5 percent of the cases packaged by each packager working in the county will be reviewed. The folders reviewed will be randomly selected and reviewed at scheduled office visits throughout the year in accordance with §§ 2006.604(c) and 2006.605(a)(1) of FmHA Instruction 2006-M (available in any FmHA office). The review will be made to determine whether: The applicant's income was properly verified; any credit report received was mailed from the Credit Reporting firm directly to the County Supervisor; the County Supervisor interviewed and counseled with the applicant prior to loan approval; the applicant was eligible for the RH assistance granted; and the loan was in accordance with FmHA procedures. Any incidence of unethical activity by a packager or the approval of improper loans by a County Supervisor will be reported promptly to the State Director for appropriate handling.

[46 FR 61991, Dec. 21, 1981, as amended at 48 FR 222, Jan. 4, 1983; 48 FR 52566, Nov. 21, 1983; 50 FR 16056, Apr. 24, 1985; 51 FR 41608, Nov. 18, 1986; 52 FR 8036, Mar. 13, 1987]

EXHIBIT B—ADDRESSES FOR AUTHENTICATION OF ALIEN REGISTRATION CARDS

This Exhibit lists the addresses of the Immigration and Naturalization Service district offices. To comply with § 1944.9(c) of this subpart, County Supervisors will request verification of the validity of alien registration cards from the nearest office.

A list of these offices follows:

Albany, New York 12207, Post Office and Courthouse, Room 220, 445 Broadway
Anchorage, Alaska 99513, Room D-229, 701 C Street
Atlanta, Georgia 30303, Room 1408, Federal Office Building, 75 Spring Street, SW
Baltimore, Maryland 21201, E.A. Garmatz Federal Building, 100 S. Hanover St.
Boston, Massachusetts 02203, John Fitzgerald Kennedy Federal Building, Government Center
Buffalo, New York 14202, 68 Court Street
Chicago, Illinois 60604, Dirksen Federal Office Building, 219 South Dearborn Street
Cincinnati, Ohio 45201, U.S. Post Office and Courthouse, 5th and Walnut Streets, Post Office Box 537
Cleveland, Ohio 44199, Room 1917, Federal Building, 1240 East 9th Street
Dallas, Texas 75202, Room 6A21, Federal Building, 1100 Commerce Street
Denver, Colorado 80202, 17027 Federal Office Building
Detroit, Michigan 48207, Federal Building, 333 Mount Elliott Street
El Paso, Texas 79984, 343 U.S. Courthouse, Post Office Box 9398
Hammond, Indiana 46320, 102 Federal Building, 507 State Street
Harlingen, Texas 78550, 2102 Teege Avenue
Hartford, Connecticut 06105, 900 Asylum Avenue
Helena, Montana 59601, Room 512, 301 South Park
Honolulu, Hawaii 96809, 595 Ala Moana Boulevard, Post Office Box 461
Houston, Texas 77004, 2627 Caroline Street
Kansas City, Missouri 64106, Suite 1100, 324 E Eleventh Street
Los Angeles, California 90012, 300 North Los Angeles Street
Los Fresnos, Texas 78566, Route 3, Box 341
Memphis, Tennessee 38104, 814 Federal Building, 167 North Main Street
Miami, Florida 33130, 155 South Miami Avenue
Milwaukee, Wisconsin 53202, Room 186 Federal Building, 517 East Wisconsin Avenue
Newark, New Jersey 07102, Federal Building, 970 Broad Street
New Orleans, Louisiana 70113, Room T-8005, Postal Services Building, 701 Loyola Avenue
New York, New York 10007, 26 Federal Plaza
Norfolk, Virginia 23502, Room 207, Bank of Virginia Building, 870 North Military Highway
Omaha, Nebraska 68102, Room 1008, Federal Office Building, 106 South 15th Street
Philadelphia, Pennsylvania 19106, Room 1321 U.S. Courthouse, Independence Mall West, 601 Market Street
Phoenix, Arizona 85025, Federal Building, 230 North First Avenue
Pittsburgh, Pennsylvania 15222, 2130 Federal Building, 1000 Liberty Avenue
Port Isabel, Texas 78566, Rural Route 3
Portland, Maine 04112, 76 Pearl Street
Portland, Oregon 97209, Federal Office Building, 511 N.W. Broadway

Providence, Rhode Island 02903, Federal Building, U.S. Post Office, Exchange Terrace
Reno, Nevada 89502, Suite 150, 350 South Center Street
Saint Albans, Vermont 05478, Federal Building, Post Office Box 328
Saint Louis, Missouri 63101, Room 423, U.S. Courthouse and Customhouse, 1114 Market Street
Saint Paul, Minnesota 55111, 927 New Post Office Building, 180 East Kellog Blvd.
Salt Lake City, Utah 84138, Room 4103, New Federal Building, 125 South State Street
San Antonio, Texas 78206, Suite A301, U.S. Federal Building, 727 East Durango
San Diego, California 92188, 880 Front Street
San Francisco, California 94111, Appraisers Building, 630 Sansome Street
San Juan, Puerto Rico 00936, U.S. Immigration and Naturalization Service, GPO Box 5068
Seattle, Washington 98134, 815 Airport Way, South
Spokane, Washington 99201, 691 U.S. Courthouse Building
Washington, D.C. 20538, E Street NW.

[46 FR 61991, Dec. 21, 1981, as amended at 48 FR 222, Jan. 4, 1983; 48 FR 52566, Nov. 21, 1983]

Exhibit C—[Reserved]

Exhibit D—Rural Housing Applicant Interview

The following items will be reviewed in detail during a personal interview between the rural housing loan applicant and County Supervisor to assure an understanding of Farmers Home Administration loan making and loan servicing authorities, and the responsibilities of the applicant/borrower. *No loan will be closed without signed evidence that this interview has been held.*

1. *Equal Credit Opportunity*: FmHA assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, physical or mental handicap (applicant must possess the capacity to enter into a legal contract for services), receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

2. *Income*: Eligibility is limited to those applicants with low or moderate income who are creditworthy and have repayment ability for the loan requested. The current income received by the applicant and all other adults who live or propose to live in the dwelling during the next 12 months must be included.

3. *Adjusted Income:* Qualification for low or moderate income is based on adjusted income. This is the total annual income less $480 for each minor person who is a member of the immediate household and lives in the home. A deduction of $480 is also allowed for persons other than the applicant or co-applicant who are 18 years of age or older and are handicapped or disabled as defined in the regulations, or who are full-time students. Also, a $400 deduction is allowed for an elderly family as defined in the regulations. Other deductions are contained in the regulations.

4. *Eligibility*: An initial determination of applicant eligibility is not an assurance that a loan will be approved. Loan approval will depend on an inspection and appraisal of the dwelling the applicant wishes to purchase and the applicant's repayment ability for the amount of loan needed to purchase the dwelling.

5. *Counseling*: Credit counseling is available at the local County Office for any applicant or borrower who needs or desires such assistance. This will include assistance in budgeting and the use and management of household income.

6. *Energy Conservation*: The local county office will provide suggested ways homeowners may conserve on the use of energy in the home. They can also provide local sources of information such as utility companies and county extension offices, which may suggest methods of conservation.

7. *Cosigner*: An applicant who does not have repayment ability may furnish a cosigner who will guarantee repayment of the loan. Such cosigner must be approved by Farmers Home Administration.

8. *Legal Fees*: The applicant must pay necessary legal fees for title examination and loan closing. Escrow Agents or Designated Attorneys will be employed for this service. In some cases the fees may be included in the loan.

9. *Interest Credit*: Interest credit is available to qualified applicants whereby the interest rate on the loan may be reduced to a minimum of 1 percent. The amount of interest credit granted depends on the borrower's income which will be reviewed at least every year.

10. *Improper Interest Credit*: Interest Credit or other subsidy assistance granted improperly either as a result of false information or through error, will be repaid by the borrower.

11. *Recapture of Interest Credit*: Interest credit received by a borrower will be subject to repayment to the Government when the mortgage is released, when the loan is assumed by another person(s), when the property is sold, or when the property is no longer occupied by the borrower.

12. *Monthly Payments:* Regular payments must be made on or before the due date. Normally, payments will be applied first to unpaid interest and the balance to principal. If a noninterest accruing administrative cost, such as a charge for an uncollectible check, has been charged to the borrower's account, payments will be applied to the outstanding administrative cost first. (The amounts of any such administrative charges are available from any FmHA office.) If for any reason a payment cannot be made on time, the borrower should immediately contact the local County Office.

13. *Insurance*: Every borrower will be required to obtain property insurance in a minimum amount specified by FmHA. The cost must be paid by the borrower and is not included in the regular monthly payment.

14. *Taxes*: All real estate taxes must be paid by the borrower directly to the local taxing office. They are not included in the regular monthly payment. Nonpayment of taxes can result in public sale of the property by the local tax authority or foreclosure by the Farmers Home Administration.

15. *Graduation*: FmHA does not replace conventional credit. FmHA credit is available to eligible rural residents only until such time as conventional credit is available to finance the borrower's needs. When, in FmHA's opinion, the borrower may obtain credit at rates and terms then prevailing in the area and on terms the borrower can reasonably be expected to meet, the borrower will be required to apply for and, if approved by the lender, accept a loan sufficient to pay the balance of the FmHA debt in full.

16. *Inspection of Property:* The borrower will be responsible for making inspections necessary to protect the borrower's interest. The FmHA inspections create or imply no duty or obligation to the particular borrower but are, rather, for the dual purpose of determining that FmHA has adequate security for its loan and to enable FmHA to determine that the agency is working toward achieving the statutory goal of providing adequate housing.

17. *Compensation for Construction Defects:* For newly built dwellings the government may in some cases pay for major defects in dwelling construction which are not repaired by the builder. To be eligible, a claim must be filed at the FmHA County Office within 18 months after financial assistance is granted.

18. *Moratorium:* Borrowers may apply for a postponement of payments if due to circumstances beyond their control they are unable to continue making scheduled payments on the loan without unduly impairing their standard of living. Some of these circumstances are: Loss of job or sudden reduction of income from other sources; a loss of income or a substantial increase in expenses due to injury, illness, or death in the family.

19. *Occupancy:* Borrowers must personally occupy the dwelling as one of the eligibility requirements for interest credit or moratorium.

20. *Home improvements or additions:* If a borrower's home is enlarged or improved so that it exceeds modest standards for size, design and cost, the borrower may no longer be eligible to receive interest credit and the home may then become ineligible for transfer by assumption in the FmHA loan program.

21. *Appeal:* Applicants or borrowers may appeal any FmHA program administrative action by which they are directly or adversely affected. This includes having a request for FmHA assistance denied or having FmHA assistance reduced, cancelled, or not renewed. The County Supervisor will provide information on appeal procedures.

The above items were discussed on ——— and we acknowledge receipt of a copy of the discussion outline.

____

County Supervisor.

____

Applicant.

____

Co-Applicant.

Original to Borrower case file.
Copy to Borrower.

[46 FR 61991, Dec. 21, 1981, as amended at 48 FR 223, Jan. 4, 1983; 50 FR 39965, Oct. 1, 1985; 51 FR 6393, Feb. 24, 1986; 52 FR 9113, Mar. 23, 1987; 54 FR 46844, Nov. 8, 1989]

EXHIBIT E—MUTUAL SELF-HELP HOUSING GUIDELINES

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Introduction.
Leadship and Supervision.
Basic Requirements.
Organization and Agreements.
Preconstruction Meetings.
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Introduction

How to give low-income rural people an opportunity to have a decent home of their own is a major challenge in rural America. To help such persons have an adequate home at a cost they can afford, the Farmers Home Administration (FmHA) makes Rural Housing (RH) loans to individual persons to enable them to participate in a mutual self-help housing project. This program is specifically designed to help those who do not have enough income to build modest homes by customary methods, to work together to build modest homes of their own.

Participating applicants who are approved by FmHA may obtain rural housing loans to buy materials, to pay for any skilled labor and contract costs required for work on their own homes and if necessary buy a building site. Basic construction labor will be performed by families mutually helping each other, after forming an unincorporated or incorporated association for this purpose.

This exchange of labor, without a cash cost to the families, is the key to the mutual self-help housing program. In this way the houses can be built for considerably less cash cost than by customary methods.

There also may be savings in the cost of materials purchased. All members of the group may buy their materials from suppliers who offer the most favorable prices. Material suppliers may offer discounts to those participating in mutual self-help housing if they know they will have a large volume of sales to members of the group.

Families have been able to build modest homes suited to their needs at savings of several thousand dollars. This substitution of labor equity for cash can reduce the cost of homes enough to bring the price of a modest home within reach of low-income rural families.

Persons interested in working with other families on an organized basis to build their own homes should contact the FmHA County Supervisor serving the area in which the housing will be located.

The County Supervisor will obtain the prior approval of the State Director for committing the FmHA to participate in each mutual self-help project.

Leadership and Supervision

FmHA will provide the overall leadership and supervision and determine the eligibility of the participating applicants to receive Rural Housing loans. A special construction supervisor may, with prior authorization of the National Office, be hired by the State Director to help the applicants with their home building. In some cases construction supervision assistance may be offered by another agency or organization. FmHA will consider such offers under the following conditions:

1. The agency or organization must have the legal, financial and actual capacity and resources to provide the construction supervision assistance under the direction of the FmHA County Supervisor.

2. The respective responsibilities of all parties should be clearly defined and stated in a written agreement to be signed by the participating agencies.

3. The proposal must be compatible with the FmHA borrower method of operation, more specifically:

a. FmHA will make Rural Housing loans to applicants based on the need and qualifications of each.

b. FmHA will determine the eligibility of each applicant, approve the house plans, inspect the construction, and disburse loan funds as needed on an individual-case basis. Loan funds will *not* be pooled.

c. No advance commitments of loan funds will be made for any project. A commitment of funds will be made for each loan when it is approved subject to the conditions stated in each loan approval.

d. No loan funds may be used to pay for construction supervision or to pay borrowers for working on their homes or on the homes of others who are participating.

e. The construction will involve as much on-site work as practicable, to obtain maximum savings to those participating.

f. Basic plans and construction methods should be standardized to the extent practicable.

Basic Requirements

Rural housing loans will be made by FmHA to those who participate in a self-help housing group and who:

1. Do not have sufficient income to build a modest home by customary methods.

2. Are creditworthy by FmHA standards and can comply with all other eligibility requirements for rural housing loans.

3. Desire to build a home of their own that is simple in design, structurally sound and low in cost.

The following basic conditions are essential to the success of a self-help housing venture:

1. A sincere spirit of cooperation on the part of all participants.

2. Competent leadership and technical supervision.

3. A complete understanding by each person of the responsibilities involved.

4. Adequate time available to participants to do the work.

5. Sufficient skills among the members of the group to do at least the basic construction work.

6. All the building sites must be close enough together to permit convenient exchange of work.

7. Ordinarily from 6 to 10 families can work together satisfactorily.

Organization and Agreements

An understanding should be reached on important items such as when the individuals in the group will be available to work, the amount of work to be performed, the number to be involved in the various work groups and the amount of time each will spend working on the homes. The group will develop a written agreement drawn so as to be binding upon all members signing it. Attached as Exhibit E-1 is a suggested form of such an agreement called a Membership

Agreement. All participating members will sign the Membership Agreement and each applicant will be given a copy. Any such document used will be given prior review and approval by the FmHA to be sure that it is legally adequate and does not conflict with applicable State laws or FmHA regulations. This should be done with the assistance of the Office of the General Counsel.

Each applicant will execute a promissory note for an amount equal to the value of the services they agree to perform for the association to build the houses. See Exhibit E-2. Such a note should not be secured by a lien against the property.

Preconstruction Meetings

The successful conduct of a mutual self-help housing program requires a series of meetings with those participating. These meetings should be held to discuss fully all of the planning, construction, and maintenance of a home, the responsibilities of home ownership, and the requirements for an FmHA rural housing loan. These meetings also will familiarize the applicants with the self-help approach, develop mutual confidences among participants and develop the interest of community leaders in the project. During the group meetings the FmHA County Supervisor and those who will be responsible for the supervision of the construction should be able to learn about the capabilities of the individuals and determine the extent to which construction can be carried out under the self-help method.

The actual number of meetings held will depend on the rate at which the group progresses toward reaching a full understanding of the responsibilities involved. Experience indicates that from 8 to 10 meetings usually will be adequate. Local people should be used, where practical, to discuss appropriate subjects in the meetings. This will help in making the local community aware of the self-help program, and also help obtain local acceptance and support for the project. The following is a recommended sequence of meetings and a suggested list of subjects to be discussed:

The first meeting should be explanatory in nature. The FmHA County Supervisor should discuss the basic principles involved in mutual self-help housing, together with a brief explanation of the purposes and limitations of and the requirements for rural housing loans. The County Supervisor should also discuss obligations of home ownership such as loan payments, taxes, insurance and maintenance. At the first meeting, time should be allowed for the individuals to become acquainted with one another. In closing the first meeting, the group should be informed of the duties and responsibilities of the officers and committees needed to carry out a mutual self-help program. The members of the group should be considering a name for the organization and the persons best suited for the various positions in order that the officers and committees can be selected at the next meeting.

At the second meeting an association should be formed and the officers and committees selected. They might include the following:

1. President.
2. Vice President.
3. Secretary-Treasurer.
4. Labor Manager.
5. Purchasing Committee.
6. Program Committee.

Additional meetings are essential, but the order in which the subjects are presented or the number of subjects included in any meeting may vary. The following topics are suggested for a series of meetings:

1. *Site Planning and Building Codes.* An architect, FmHA engineer, or a good builder who also does home designing could be invited to discuss factors in selecting house size. The local building inspector could be asked to speak on building and health code requirements.

2. *Home Planning.* An architect or home economist may be invited to discuss home kitchen layouts, traffic patterns, window placement, economical construction, and other considerations in the selection of a good house plan.

3. *Plans and Specifications.* The group will probably have questions and need individual help in making decisions concerning plans and specifications for their homes. The County Supervisor and the construction supervisor should help each applicant develop suitable specifications.

4. *Cost of Materials.* The purchasing committee will obtain and review prices of materials and contract work. At one of the last meetings to be held before the construction starts, the purchasing committee should report on its recommendations for buying materials and awarding contracts.

5. *Taxes.* A discussion of the method of tax appraising could be given by the local tax assessor. Based on plans and locations a rough estimate should be made of expected taxes.

6. *Insurance.* A local insurance agent may be asked to speak on insurance for fire and extended coverage, household policies, and other coverages of interest to the group such as liability insurance. The FmHA County Supervisor should discuss fire, windstorm and other hazard insurance requirements of RH loans.

7. *Mortgage Requirements.* The FmHA County Supervisor might discuss the FmHA mortgage and related requirements. A local attorney might be asked to discuss other legal aspects of the program.

8. *Maintenance Costs.* The County Supervisor, the construction supervisor or a local

real estate agent might discuss the importance of proper maintenance for a home. They should emphasize how money spent for maintenance improves appearance, helps maintain value and saves money in the long run.

9. *Money Management.* The FmHA County Supervisor should impress upon the group the necessity of following the basic principles of money management such as keeping records, following a budget, and not overspending on non-essentials.

10. *Labor Sharing Arrangement.* The group should discuss and reach decisions as to how the members will share the labor, how records will be kept of time worked, how to make sure that labor will be exchanged on a basis that is fair to all members and how to evidence and record these decisions.

11. *Use of Tools.* One or more of the meetings should include demonstrations and training by the construction supervisor of the safe and proper use of tools. Special attention should be given to the use of basic tools such as level, square, rule, saw, and any power tools that might be used in the construction.

12. *Construction and Work Procedures.* The authority and duties of the construction supervisor will be discussed in detail. The procedures for actual construction will be discussed including labor sharing, work programs, order of development, function of committees, time reporting for work completed and future hours available.

13. *Ground Breaking Plans.* The final preconstruction meeting should be more of a social get-together than a business meeting. This is also the logical time to plan a ground breaking ceremony for the day the loans are closed.

Construction

The basic work is performed, largely on a labor exchange basis, by the participating families under the guidance of the construction supervisor.

The group may, depending on the skills of the individuals, plan to do all the work or plan to contract for work which they cannot do readily, such as installation of wiring, plumbing and kitchen cabinets and equipment, excavating for basements and drywall finishing. Highly skilled or specialized jobs will be contracted when such services are not available in the group.

There may be an inclination on the part of some participants to want to concentrate on their own homes, particularly after the framing is in place. Therefore, a prior understanding should be reached regarding the specific responsibilities of each family. Rather than completing or nearly completing each house one at a time, work should start on all houses and each stage of construction be finished on all before starting the next stage of construction on any house to the extent consistent with good construction practices.

To effect savings, materials for all the houses may be purchased from the one or several suppliers who offer the lowest prices. Also, all contracts for members of the group may be awarded to the same contractors. To illustrate, the plumbing contractor offering the lowest price ordinarily should perform the plumbing for all of the dwellings.

Each borrower will pay the material supplier for materials used, and the contractor for work done, on its own home. All deliveries of materials will be itemized separately for each home. The Association as a whole, after considering the suggestions of the purchasing committee will recommend the suppliers from whom materials will be purchased and the contractors to whom the contracts will be awarded.

The construction supervisor with the advice of the president of the association should divide the group into work teams. Work teams should be organized on the basis of skills, compatability, and availability. For example, one team could lay out and pour footings and another team could lay bricks. The third team could begin framing as soon as the foundation is ready.

A firm understanding will be reached that no changes in construction from the approved plans and specifications may be made without furnishing the County Supervisor with full cost figures and obtaining approval in advance. If any change results in a need for additional funds, they must be furnished by the borrower before approval. All homes should be finished at or about the same time and none should be occupied prior to completion of them all.

The Association should have brief meetings, at least once a week, to:

1. Report on performance and hours of work performed.
2. Settle any disagreements.
3. Plan work schedule and purchases for the coming week.

[46 FR 61991, Dec. 21, 1981. Redesignated and amended at 48 FR 223, Jan. 4, 1983]

EXHIBIT E-1—Membership Agreement

——— Association

Membership Agreement

We understand that by signing this agreement we will become members in the ——— Association when we receive adequate credit to finance the home we intend to build. We have read the agreement or have had it read to us and agree to comply with all its provisions. Each applicant has been given a copy to keep.

Purpose

The purpose of this Association is to provide a way whereby each member can help itself and every other member to build its own home.

Membership

Membership will be limited to those persons who:

1. Do not have an adequate home;
2. Are willing to work with the other members of the Association in building their homes;
3. Have a commitment to obtain financing for the cash cost of their home; and
4. Sign the Membership Agreement.

Applicants and co-applicants may both sign the Membership Agreement. As used in this agreement the term "Applicant" means either applicant or co-applicant when both sign the agreement, or the person signing when only one signs.

Voting Rights

Each member will have one vote in the election of officers and all other matters involving a decision by the membership.

Officers

The officers of the Association will be a President, Vice-President and a Secretary-Treasurer. Each will be elected, at a meeting, by a majority vote of all the members and will continue to hold office unless the officer resigns, dies, is incapacitated, or is removed by vote of two-thirds of all the members at a called meeting for the purpose of considering such removal. The duties of the officers will be as follows:

The President will:

1. Call membership meetings and officers' meetings;
2. Preside over all meetings;
3. Work closely with the construction supervisor; and
4. See that committees and members carry out their responsibilities in connection with mutual self-help project.

The Vice-President will:

1. Act for the President in the President's absence, and
2. Be chairman of the Program Committee.

The Secretary-Treasurer will:

1. Keep the minutes of each meeting.
2. Handle correspondence of the Association.
3. Collect and handle through a checking account in the Association's name, funds the organization may need. These may include items such as stationery, stamps and record book.
4. Maintain other records of the Association at the direction of the President.

Appointed Committees and Positions

The officers by majority vote will appoint the following from the membership:

1. A Labor Manager who will keep records of the hours worked by each member and notify the construction supervisor as to the availability of members for work on the housing.
2. A Purchasing Committee of three members of the Association that will obtain and review prices and cost estimates for the houses to be built and recommend contractors and suppliers to be used by the members.
3. Two of the three members of the Program Committee. The third member will be the Vice-President, who will be chairperson. This committee will help plan meetings and assist in obtaining outside speakers.

Meetings

Meetings of officers and meetings of members will be held as often as necessary to successfully complete the mutual self-help housing. Meetings may be called by the President when considered advisable and will be called by the President at the written request of not less than —— members, or at the request of the Farmers Home Administration County Supervisor or other authorized Farmers Home Administration employee. Each officer or member will be notified at least three days before the meeting as to the time, date and place of each meeting by mail, telephone or by announcement at the preceding meeting.

Labor Exchange Agreement

Each member agrees to furnish 700 hours of labor for the construction of houses of the other members of this Association in return for 700 hours of labor from other members in the actual construction of its house. We understand that if more than 700 hours labor is required from each member to complete all houses, each member will furnish its share of additional labor needed. In case less than 700 hours labor is required from each to complete all the houses, each family's obligation under this agreement will be satisfied when it has contributed the number of hours labor actually required.

The number of hours worked by each member or by any other person for any applicant credit will be verified by the Labor Manager. Each member will sign a promissory note to the Association in the amount of $——. It is understood the amount of $—— for each approved hour of labor performed will be credited on the note and that the note will be satisfied when the number of hours required of each member has been worked. However, if any member because of death, illness, or injury is unable to make its full labor contribution personally or from other sources as required, that member will be excused to that extent from performing its labor agreement, and all the other members will assist such a member in completing its house and will contribute the additional amount of labor for all the houses which otherwise the stricken member would have furnished.

We agree to exchange labor on the following basis:

1. Equal time will be allowed for labor performed by members in the actual construction of the homes regardless of the type of work involved.

2. Rates for time allowances for labor performed by persons other than members, will be determined by the Officers with the approval of the Labor Manager and the construction supervisor.

3. A member may not work alone on the member's own house unless the job can be done alone and the consent of the construction supervisor has been obtained.

4. The hours worked will be reported by each worker to the construction supervisor each day. The construction supervisor will promptly turn in a work sheet for each worker to the Labor Manager, who will credit the hours worked to that member's account. In case of a dispute as to the number of hours to be credited, the question will be resolved by a majority vote of the officers of the Association.

General Agreements

We agree that:

The Association, by majority vote, will determine and recommend the best way to buy materials and recommend contractors for any skilled work. Each member shall make its own decision in selecting the type of building materials and in selecting a contractor from those recommended by the Association. Each member shall pay the cost of materials and the contractor in connection with its own home.

2. The Association will collect cost of operation of the Association from members, not to exceed $——— from each member.

The Association will collect, by any means available, payment for failing to provide the amount of labor agreed.

4. The Association will act for the group in other matters related to the project when authorized by a majority of the members.

5. Property insurance will be obtained by the members as required by the Farmers Home Administration. Members also will obtain workmen's compensation insurance as required by State law or public liability insurance against claims of others when required by the Farmers Home Administration.

Dissolution

After a determination is made by the officers that the last house is completed and that there are no obligations of or to the Association, upon majority vote of the members and with the consent of the Farmers Home Administration the Association shall terminate.

Amendments

Amendments to this agreement may be made by a majority vote of the members, at a meeting called for the announced purpose of considering amendments, to take effect upon approval by the Farmers Home Administration County Supervisor; but no amendments may decrease the rights or increase the liability of any member without such member's consent.

Date ——— Signed Applicant ———
Date ——— Signed Co-applicant ———

Date ——— Signed Applicant ———
Date ——— Signed Co-applicant ———

Date ——— Signed Applicant ———
Date ——— Signed Co-applicant ———

Date ——— Signed Applicant ———
Date ——— Signed Co-applicant ———

[46 FR 61991, Dec. 21, 1981. Redesignated at 48 FR 223, Jan. 4, 1983]

EXHIBIT E-2—Promissory Note

Date ———

Eighteen months after date for value received, we promise to pay to the ——— Association or order the sum of ——— ($). We have agreed to furnish said Association 700 hours of our own labor or the labor of other persons as approved by the officers and Labor Manager of the Association and the construction supervisor in accordance with the Membership Agreement of the Association. Credits will be made on this note at the rate of $——— for each hour worked by either of the undersigned, and at a rate determined in accordance with the Membership Agreement for each hour worked by any other person for the account of the undersigned, in the next eighteen months. This note will be satisfied when the undersigned have furnished the actually required number of hours labor. All time worked must be approved by the Labor Manager of the Association. This note is subject to all provisions of the Membership Agreement.

Applicant ———
Witness ———

Co-applicant ——————————————
Address ——————————————

[46 FR 61991, Dec. 21, 1981. Redesignated at 48 FR 223, Jan. 4, 1983]

EXHIBIT F—SUPPLEMENTAL REQUIREMENTS FOR MAKING SECTION 502 RH LOANS FOR MANUFACTURED HOMES

Paragraph

I. What are the general conditions for financing a manufactured home?
II. What are the definitions of terms used in this Exhibit?
III. What are the applicant eligibility requirements?
IV. For what purposes may Section 502 RH loan funds be used?
V. For what purposes may Section 502 RH funds not be used?
VI. What are the building and siting requirements?
VII. How will a manufactured home be appraised?
VIII. What are the loan limitations?
IX. How does a dealer-contractor qualify to participate in the program?
X. What are the County Supervisor's, District Director's and State Director's responsibilities in evaluating a dealer-contractor?
XI. What are the contract requirements?
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XIV. What are the requirements for inspections and design reviews?
XV. What are the rates and terms of the loan?
XVI. Can a borrower be granted interest credit with a Section 502 RH loan on a manufactured home?
XVII. May a dealer-contractor obtain conditional commitments for manufactured homes?
XVIII. What information must an RH applicant submit with a request for financing a manufactured home?
XIX. What are the other considerations?

I. What are the general conditions for financing a manufactured home?

a. This Exhibit provides for the financing of a manufactured home (herein called unit) with a Section 502 Rural Housing loan. Manufactured structures (as described in Exhibit B to Subpart A of Part 1924), generally referred to as modular homes that are constructed to the FmHA adopted MPS or FmHA recognized building codes, are not affected by this Exhibit. All parts of Part 1944, Subpart A of this chapter apply unless modified by this Exhibit.

b. FmHA may finance a manufactured home if both the unit and its site are covered by the mortgage or Deed of Trust. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the site and unit as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The unit and site must be taxed as real estate by the jurisdiction where located, if such taxation is permitted under applicable law, when the loan is closed. FmHA may not finance a lot for a unit already owned by the applicant. It is a violation of this regulation to finance furniture or to refinance any existing debts owed by the applicant/borrower.

II. What are the definitions of terms used in this Exhibit?

As used in this Exhibit the term—

a. "Manufactured Home" (Unit) means a structure which is built to the Federal Manufactured Home Construction and Safety Standards and FmHA Thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. For the purpose of the FmHA Section 502 manufactured home program permanent foundations are required.

b. "Furniture" means movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, or stereo sets, and other similar items of personal property, but furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment or other similar items.

c. "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

d. "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together horizontally when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

e. "Eligible Options" mean items that could be financed under the Section 502 Program but are not included in the base price for the manufactured home unit. Examples are appliances, wiring for dryer, plumbing for washer, standard bathroom and kitchen fixtures, etc.

f. "Federal Manufactured Home Construction and Safety Standards" (FMHCSS) mean a 1976 Federal Standard commonly known as the HUD standards for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

> AS EVIDENCED BY THIS LABEL NO. ———— THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

g. "Dealer-Contractor" is a person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes. A person, firm, partnership or corporation not capable of providing the complete service is not eligible to be a "dealer-contractor."

h. "New Unit" means a unit not previously occupied as a residence and less than 1 year old.

i. "Existing Unit" is a unit previously occupied as a residence or more than 1 year old.

j. "Design Approval Primary Inspection Agency" (DAPIA) is a state or private organization which has been approved by the Secretary of HUD to evaluate (i.e. approve or disapprove) manufactured home designs and quality control programs.

III. What are the applicant eligibility requirements?

An applicant meeting the eligibility requirements of §§ 1944.8 and 1944.9 of this subpart is eligible for a loan on a manufactured home.

IV. For what purposes may Section 502 RH loan funds be used?

FmHA may finance the following when a real estate mortgage covers both the unit and the lot:

a. A new unit for a site owned by the applicant which meets the requirements and limitations of § 1944.11 of this subpart or a leasehold meeting the provisions of § 1944.15(a)(5) of this subpart.

b. A new unit and a site which meets the requirements of § 1944.11 of this subpart.

c. Site development work. The types of site development required and permitted are in paragraph VI of this Exhibit and Part 1924, Subpart A of this chapter.

d. Subsequent loans for equity or repair with a transfer, credit sale, or a subsequent loan for repair of a unit if the unit is currently financed with a section 502 Rural Housing loan.

e. Transportation and set-up costs if a new unit is financed.

V. For what purposes may Section 502 RH funds not be used?

FmHA may *not* use loan funds to finance:

a. An existing unit and site unless it is already financed with a Section 502 Rural Housing loan or is being sold from FmHA inventory.

b. The purchase of a site without also financing the unit.

c. Existing debts owed by the applicant/borrower.

d. A unit without an affixed certified label indicating the construction of the unit is in accordance with the FMHCSS.

e. Alteration or remodeling of the unit when the initial loan is made.

f. Furniture as defined in this Exhibit.

g. Any unit not constructed to the FmHA thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

h. A unit that at the time of loan approval would result in more than one person per room. The number of rooms include bedrooms, living room, dining room, kitchen, den or family room.

i. Repairs unless authorized in paragraph (IV)(d) of this Exhibit.

VI. What are the building and siting requirements?

The unit must be modest in design, size and cost as defined in § 1944.16(a) of this subpart. The floor area must be 400 square feet or more, and the width 12 feet or more for a single wide unit and 20 feet or more for a double wide unit. Construction of the unit must conform with the FMHCSS as evidenced by an affixed certification label. The unit must be constructed to the FmHA thermal requirements of Exhibit D of Subpart A of Part 1924 of this chapter and identified by an affixed label as required in paragraph XIV c 3 of this Exhibit. Site development and set-up must conform to Exhibit J of Subpart A of Part 1924 of this chapter.

VII. *How will a manufactured home be appraised?*

a. The appraiser will use normal single family residential appraisal techniques when appraising a manufactured home and the site. Since other manufactured homes and sites provide the most similar comparables, every effort must be made to obtain such comparables even if their distance from the subject is greater than normally desirable. If other units are not available within a reasonable distance, the appraiser may use other than manufactured homes after adjusting for location, construction material, size, quality, etc.

b. The appraiser will use Marshall and Swift cost data for manufactured housing to determine the cost approach. An alternate cost method may be substituted for Marshall and Swift with prior authorization from the National Office.

VIII. *What are the loan limitations?*

A loan for a new unit, new unit and site or an existing site and unit may not exceed the final reconciliation/estimated value of the developed security as determined by a real estate appraisal.

IX. *How does a dealer-contractor qualify to participate in the program?*

A dealer-contractor may apply to participate by submitting Form FmHA 1944-5, "Dealer-Contractor Application," and a current financial statement prepared by a public accountant and certified by the dealer to the FmHA County Supervisor. A person, firm, partnership or corporation unable to provide a full service of sales, service, erection and site development is not eligible to participate as a dealer-contractor. To qualify to participate a dealer-contractor must be:

a. Financially responsible,

b. Qualified to perform satisfactorily the set-up of the homes and site development work,

c. Equipped to extend proper services to the customer, and

d. Willing to provide a warranty as required in paragraph XIII of this Exhibit.

X. *What are the County Supervisor's, District Director's and State Director's responsibilities in evaluating a dealer-contractor?*

a. The County Supervisor will:

1. Maintain an operational file for each dealer-contractor who submits Form FmHA 1944-5, "Dealer-Contractor Application," and a certified financial statement.

2. Obtain a commercial credit report on the firm and consumer credit reports on each of the principals.

3. Make direct checks on trade and bank references and check with the local Better Business Bureau.

4. Inspect the dealer's place of business to determine the permanency of same and the adequacy of available equipment.

5. Obtain copies of brochures, descriptive literature, guarantees, sales contracts, and price lists.

6. Determine that the dealer-contractor has the necessary equipment and experience to perform or subcontract all site development work. If the firm uses subcontractors, obtain the names of the subcontractors and their qualifications. A field inspection of recently developed sites and setups would be desirable in determining whether the dealer-contractor has the necessary experience.

7. Carefully analyze the above information to determine if the dealer-contractor is able to provide the full service of sales, service, erection and warranty of manufactured homes and developing sites for them. Submit, through the District Director, to the State Director a recommendation with supporting documentation as to whether or not the dealer-contractor is acceptable.

8. Maintain a complaint file on each dealer-contractor to establish a basis for limiting future business with that dealer-contractor, if necessary. In cases of serious or continuous noncompliance, refer to Subpart M of Part 1940 (available in any FmHA office) for possible debarment action.

b. The District Director will review the County Supervisor's recommendations and forward them, with any additional comments, to the State Director for review.

c. The State Director will make the decision on dealer-contractor's acceptability and, if acceptable, issue a letter of acceptance. The State Director will also issue a list of acceptable dealer-contractors in the state as a supplement to this Exhibit. If the State Director determines the dealer-contractor not acceptable, appeal rights will be granted as if the decision were covered by Subpart B of Part 1900 of this chapter. Any dealer-contractor held not to be acceptable may reapply for acceptance at any time the dealer-contractor has reason to believe the conditions leading to the determination have been removed.

XI. *What are the contract requirements?*

The dealer-contractor must sign Form FmHA 424-6, "Construction Contract," which will cover both the unit and site development work. The "borrower method" of development or use of multi-contracts is *prohibited.* A dealer-contractor may use subcontractors if the dealer-contractor is *solely* responsible for all work under the contract. Payment for all work will be in accordance with Form FmHA 424-6 and Subpart A of

Part 1924 of this chapter, except no payment will be made for materials or property stored on site (e.g. payment for a unit will be made only after it is permanently attached to the foundation).

XII. What are the lien release requirements?

All persons furnishing materials or labor in connection with the contract must sign Form FmHA 424-10, "Release by Claimants," except the manufacturer of the unit. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin that the unit is free and clear of all legal encumbrances. The use of Form FmHA 424-10 is optional in a State if the State Director has issued a State supplement not requiring its use. However, in all states the certificate of origin is required.

XIII. What are the warranty requirements?

A dealer-contractor must provide a warranty in accordance with the provisions of § 1924.12 of Subpart A of Part 1924. The warranty must identify the unit(s) by serial number(s). The dealer-contractor must certify that the manufactured home property substantially complies with the plans and specifications and the manufactured home sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor will also furnish the applicant with a copy of all manufacturer's warranties.

XIV. What are the requirements for inspections and design reviews?

a. The County Supervisor will inspect and review for purposes of determining that the government's security is adequate and that the general goals of the program are being complied with but not for the protection of the specific borrower:

1. That the unit has a properly affixed certification label indicating the construction of the unit is in accordance with the FMHCSS.

2. That the unit is modest in size, design and cost in accordance with § 1944.16 of this subpart and other housing financed for similar applicants in the area.

3. That the thermal design certification has been provided as required in paragraphs XIV(c)(2)(i) or XIV(c)(2)(ii).

4. That the unit contains the manufacturer's thermal certification as required in paragraph XIV(c)(3) of this Exhibit, and that the certified winter degree days are correct for the location of the unit.

5. To determine compliance with Exhibit J of Subpart A of Part 1924 of this chapter for all onsite development and features not covered by the FMHCSS.

6. To determine foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with Exhibit J of Subpart A of Part 1924 of this chapter and for determining design suitability for the soil conditions.

7. To determine compliance with site development requirements including required siting approval by State and local authorities, when those entities regulate manufactured home siting.

8. To determine that the site is in compliance with Subpart G of Part 1940 of this chapter.

b. Designs must be reviewed and construction must be inspected in accordance with the procedures established by the Secretary of HUD in 24 CFR Part 3282.

c. Units must be designed and constructed in accordance with Exhibit D to Subpart A of Part 1924, "Thermal Performance Construction Standards."

1. The manufacturer must assign a unique designation to the design for each unit proposed for FmHA financing. This designation may not be repeated for any design package with a lower thermal resistance.

2. The unit must be designed to conform with either the prescriptive standards in paragraph IV A of Exhibit D to Subpart A of Part 1924, or the optional standards in paragraph IV C of Exhibit D to Subpart A of Part 1924.

(i) If a manufacturer proposes that a design conform with paragraph IV A of Exhibit D to Subpart A of Part 1924, then a DAPIA, qualified registered engineer or qualified registered architect must evaluate the thermal design of the unit and determine the maximum number of winter degree days in which the unit may be located based on paragraph IV A of Exhibit D to Subpart A of Part 1924. This determination must be certified in writing by the DAPIA qualified registered engineer or qualified registered architect before FmHA will accept the unit for financing. This certification shall include the date, the name of the manufacturer, the model number, the design package number, and the maximum number of winter degree days in which the unit may be located. The manufacturer must submit a copy of this certification prior to loan approval, to the FmHA loan approval official. This certification shall be filed in the loan docket.

(ii) If a manufacturer proposes that a design conform with paragraph IV C of Exhibit D to Subpart A of Part 1924, then the manufacturer shall submit to the FmHA State Office all drawings, sketches, material descriptions, thermal calculations, and any other information needed to substantiate design conformance. This shall be submitted to the State Office for the State which the manufacturing plant is located. The State Office architect or engineer will review this submittal. Approval authority of designs shall be in accordance with paragraph IV C of Exhibit D to Subpart A of Part 1924. The State Office shall notify County and District Offices of models with approved thermal designs and other State Offices will be notified, if requested by the manufacturer. A State Office notification shall be accepted by other State Offices. Notifications shall include the manufacturer's name, model number, design package number, and the maximum number of winter degree days in which the unit may be located. A copy of this notification shall be filed in the loan docket.

3. The manufacturer must provide the following certification on a sticker approximately 4 inches by 6 inches affixed in a permanent manner near the HUD data plate: "This unit is constructed in accordance with design package ________ which conforms with the Farmers Home Administration thermal standards for ________ winter degree days. The thermal design of this unit was reviewed by ________. This unit was constructed by ________." The manufacturer will insert into the first blank space the designation for the design package, into the second blank space the maximum number of winter degree days identified in paragraph XIV(c)(2), into the third blank space the name of the DAPIA, registered engineer or registered architect which reviewed the thermal design in paragraph XIV(c)(2)(i) (or insert "FmHA" if reviewed in accordance with paragraph XIV(c)(2)(ii)), and into the fourth blank space the name of the manufacturer.

XV. What are the rates and terms of the loan?

The interest rates are the same as for other real estate loans made with Section 502 rural housing loan funds. The term of the loan may be up to 30 years for both single-wide and double-wide units.

XVI. Can a borrower be granted interest credit with a Section 502 RH loan on a manufactured home?

A borrower may receive interest credit under the conditions of § 1944.34 of this subpart.

XVII. May a dealer-contractor obtain conditional commitments for manufactured homes?

A dealer-contractor may obtain conditional commitments under § 1944.45 of this subpart.

XVIII. What information must an RH applicant submit with a request for financing a manufactured home?

In addition to the information required in Subpart A of Part 1944 of this chapter, an applicant must submit the following:

a. A plot plan and site development plan under Subpart A of Part 1924 of this chapter.

b. An itemized cost breakdown of the total package including the base unit, eligible options, site development, installation, set-up, lot costs and any credit for wheels and axles.

c. A statement signed by the dealer-contractor that any cash payment or rebate as a result of the purchase of the manufactured home will be deducted from the price of the unit and not paid to the applicant.

d. A statement signed by the dealer-contractor that this is the full price of the unit and all development, and if furniture is being purchased by the applicant, that a lien will not be filed against the FmHA security property.

XIX. What are the other considerations?

a. Development under the mutual self-help and borrower construction methods is not permitted for manufactured homes.

b. Debarment procedures apply to dealer-contractors who are removed from the list of approved dealer-contractors.

[51 FR 41608, Nov. 18, 1986; 52 FR 36565, Sept. 30, 1987, as amended at 54 FR 14334, Apr. 11, 1989]

Subparts B–C—[Reserved]

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

SOURCE: 45 FR 47655, July 16, 1980, unless otherwise noted.

§ 1944.151 Purpose.

This subpart sets forth the polices and procedures and delegates authority for making initial and subsequent insures loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor.

§ 1944.152 Objective.

The basic objective of the Farmers Home Administration (FmHA) in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing and related facilities for domestic farm labor to be located in areas where a need exists and in making LH grants when there is a pressing need for such facilities in the area and there is reasonable doubt that the housing can be provided without the grant assistance.

§ 1944.153 Definitions.

As used in this subpart:

(a) *Domestic farm laborer.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may also include the immediate families of such persons. Retired or disabled domestic farm laborers who are eligible tenants at the time of their retirement or on becoming disabled may continue to live in a project that they initially occupied as an eligible domestic farm laborer. A domestic laborer is a person who performs "farm labor" which includes all services performed:

(1) On a farm, in the employ of the owner, tenant, labor contractor, or other operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or aquaculture commodity; or

(2) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or aquacultural commodity; but only if such operator of the farm produced the commodity; or

(3) In the employ of a group of farm operators in the performance of services described in paragraph (a)(2) of this section but only if such operators produced all of the commodities with respect to which such service is performed; but shall not be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or aquacultural commodity after its delivery to a terminal market for distribution for consumption.

(b) *Housing.* New or existing structures which are or will be suitable for decent, safe, and sanitary dwelling use by domestic farm labor. "Housing" may include household furnishings and related facilities where appropriate.

(c) *Household furnishings.* Such basic durable items as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers, and beds. Items such as bedding, linens, dishes, silverware and cooking utensils are not included in this definition.

(d) *Related facilities.* Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

(e) *Farmowner.* A natural person or persons who are the "owners" of a "farm" as these two terms are further defined in Part 1944 Subpart A.

(f) *Farmer.* A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a "farm".

(g) *Family farm corporation or partnership.* A private corporation or partnership in which at least 90% of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership shall not be eligible for assistance. The family farm corporation or partnership must be (1) legally organized and authorized to own and operate a farm business within the State, (2) legally able to carry out the purposes of the loan, and (3) prohibited from the sale or transfer of 90% of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

(h) *Association of farmers.* Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

(i) *Organization.* A broad-based nonprofit organizaton, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or political subdivision of State or local government.

(j) *Local broad-based nonprofit organization.* An organization, public or private, that operates in one employment area and which:

(1) Is incorporated within the State, Puerto Rico, or Virgin Islands, or a Federally recognized Indian Tribe,

(2) Is organized and operated on a nonprofit basis,

(3) Is legally precluded from distributing any profits or dividends to its members or any private individual during its corporate lifetime,

(4) Is not grower oriented (majority of board must be nonfarmers),

(5) Pledges to administer the housing as a community service in the interest of the whole community, regardless of race, color, religion, sex, handicap, marital or familial, age or National origin.

(6) Has at least 25 members for projects with a total development cost of up to $100,000 and additional members for projects costing more than $100,000, and

(7) Has a membership reflecting a variety of interests of the area where the housing will be located.

(k) *Regional or statewide broad-based nonprofit organization.* An organization that operates or plans to operate in more than one employment area, that provides or is planning to provide labor housing in those areas, and that meets the following criteria in addition to those in § 1944.153(j) (1) through (6):

(1) The membership of the organization must be broadly representative of the region or state by having representation from either the counties or employment areas in which it provides or is planning to provide labor housing; and

(2) The membership must include at least eight (8) members from the employment area to be served by the project who represent a variety of interests of the employment area. If the project is located in a community or dependent upon a community for essential services, at least four of the eight members must be residents of that community.

(l) *Variety of interests.* To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

(m) *Nonprofit organization of farmworkers.* A nonprofit organization which is incorporated within the State, Puerto Rico, or the Virgin Islands, which has local representation in the membership, and whose membership is composed of at least 51% farmworkers.

(n) *Construct or repair.* To construct new structures or facilities, or to acquire, relocate, or repair or improve existing structures or facilities.

(o) *Members and membership.* Includes stockholders and stock when appropriate.

(p) *Board and directors.* Includes the governing body and members of the governing body of an organization.

(q) *Promissory note.* May include a bond or other evidence of indebtedness.

(r) *Mortgage.* May include any appropriate form of security instrument.

(s) *Development cost.* Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges, and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. For all types of LH applicants, other than the individual farmowners, family farm corporation and partnerships, and associations of farmers, the development cost may include initial operating expenses of up to 2 percent of the permitted costs.

(t) *Individual.* A natural person. It may include the spouse.

(u) *Applicant.* The applicant for or the recipient of an LH loan or grant.

(v) *LH fund(s).* May include either loan or grant monies or both in this subpart.

(w) *Subsequent LH loan or grant.* A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

(x) *Migrant agricultural laborers.* Are agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place he/she calls home or *home base.* (This does not include day-haul agricultural laborers whose travels are limited to work areas within one day of their work locations.)

(y) *Home base.* A home base State is a State which the migrant farmworker claims as his/her domicile.

(z) *Seasonal housing.* Described in Exhibit I of Subpart A of Part 1924 of this chapter.

(aa) *Farm labor contractor* means any person—other than an agriculture employer, an agricultural association, or an employee of an agriculture employer or agriculture association—who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any year-round or migrant farm laborer.

(bb) *Substantial portion of income.* That portion of income received which has been derived from *farm labor* performed by a *farm laborer* as defined in paragraph (a) of this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) Actual dollars earned from farm labor by farm laborers other than migrant laborers must equal at least 65 percent of the annual income limits indicated for the Standard Federal Regions, as shown in Exhibit J (available in any FmHA office). For migrant farm laborers living in seasonal housing the actual dollars earned from farm labor by a farm laborer must equal at least 50 percent of annual limits as shown in Exhibit J (available in any FmHA office).

(ii) An alternate measure for determining substantial portion of income when actual earnings are not available may be the actual duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm laborers must have worked at least 110 whole days in farm work. For the purposes of this section one whole day is the equivalent at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(2) Priority for occupancy in farm labor housing must be given to households with 71 to 100 percent of total earnings from farm labor as defined in this section; second priority is to be given to households with earnings 51 to 70 percent of total earnings from farm labor; third priority is to be given to households with 26 to 50 percent of total earnings from farm labor; and lowest priority is to be given to those households where farm labor accounts for less than 25 percent total earnings.

(3) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine substantial portion of income under paragraph (bb)(1) of this section.

(4) The tenant who qualified as a domestic farm laborer in order to reside or continue to reside in the project must not have household income which exceeds the moderate income limit as shown in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office) for the appropriate household size and geographical area.

(i) Income for purposes of this section is defined in paragraph II C of Exhibit B of Subpart C of Part 1930 of this chapter and also includes the full amount of periodic payments received from Social Security (including Social Security payments received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts, as well as any payments that will begin during the next 12 months, such as, payments in lieu of earnings, such as unemployment and disability compensation, worker compensation and severance pay.

(ii) Exempted Income is income of dependent, unmarried minors, under *18 years of age* except as specified in paragraph (bb)(4)(i) of this section. (Tenants or co-tenants or spouses of either are not considered as minors for purposes of this section.)

(cc) Familial Status. See subpart E, of part 1944 of this Chapter, or subpart C of part 1930 of this Chapter.

(dd) Handicap. See subpart C of part 1930 of this Chapter.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981; 48 FR 44762, Sept. 30, 1983; 51 FR 22926, June 24, 1986; 55 FR 6244, Feb. 22, 1990]

§ 1944.154 Responsibility for LH processing and servicing.

All LH loan and/or LH grant application processing and servicing is the responsibility of the FmHA District Director. However, the State Director may authorize the District Director to delegate processing and servicing functions on a case by case basis to the appropriate County Supervisor. Such delegation is limited to LH loans to farmowners and family farm corporations or partnerships when (1) such an entity has another existing FmHA loan(s), (2) the LH loan is considered part of the applicant's farming operation, and (3) the delegation is considered by the State Director to be in the best interest of the borrower and FmHA.

§§ 1944.155—1944.156 [Reserved]

§ 1944.157 Eligibility requirements.

(a) *Eligibility of applicant for an LH loan.* To be eligible for an LH loan the applicant must:

(1) Be a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153, which will own the housing and operate it on a nonprofit basis.

(2) Except for State and local public agencies, or a political subdivision thereof, be unable to provide the necessary housing from their own resources and be unable to obtain the necessary credit from any other source upon terms and conditions they could reasonably be expected to fulfill. If an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with *less* than a ten percent corporate or partnership interest need not be considered.

The State Director may make an exception to the requirement that an individual farmowner, family farm corporation, family farm partnership or an association be unable to obtain the necessary credit elsewhere when *all* of the following conditions exist:

(i) There is a need in the area for housing for domestic farmworkers *who are migrants* and that applicant will provide such housing;

(ii) There are no qualified State or political subdivisions or public or private nonprofit organizations currently available or likely to become available within a reasonable period of time that are willing and able to provide the housing; and

(iii) The interest rate for such loans is in accordance with Subpart A of Part 1810 of this chapter (FmHA Instruction 440.1).

(3) Have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, moveable furnishings and equipment, printing lease forms, and other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof may include

up to 2 percent of the development cost for initial operating expenses.

(4) After the loan is made, have income sufficient to pay operating expenses, make necessary capital replacements, make the payments on the loan and other authorized debts, and accumulate reasonable reserves as required.

(5) Possess the legal and actual capacity, character, ability, and experience to carry out the undertakings and obligations required for the loan, including the obligation to maintain and operate the housing and related facilities for the purpose for which the loan is made. Organizations operating in more than one local area will be required to indicate their ability to provide local management and supervision of the day-to-day operation of the housing project.

(6) Intend to use the housing for labor to be used in the farming operations of the applicant or farming operations of its members if an individual farmowner, family farm corporation or partnership, or an association of farmers.

(7) Own the housing and related land or become the owner when the loan is closed. An owner may include, in addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include a lease of land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the labor housing (LH) loan against the property will not exceed the maximum security value or Maximum Debt Limit (MDL) determined in accordance with Subpart A of Part 1809 (FmHA Instruction 422.1), or Subparts B and C of Part 1922 of this chapter, as appropriate.

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate charged for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the LH mortgage or to transfer the lease.

(B) Permit FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the LH loan, to transfer the leasehold, subject to the LH mortgage, to a transferee with assumption of the LH debt and grant obligation.

(vii) The advice of the Office of the General Counsel (OGC) will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(8) If it is a private broad-based nonprofit organization or a nonprofit organization of farmworkers, meet the following additional requirements:

(i) In the event of its dissolution, be legally bound to transfer its net assets to a nonprofit organization of a similar type or a public body for use for domestic farm labor housing or other public purposes if the need for farm labor housing no longer exists.

(ii) Responsibility for management of the housing must be vested in the applicant's board of directors.

(A) A broad-based nonprofit organization must be governed by a board of directors of not less than five members who are experienced in such fields as real estate management, finance, or related businesses and who will not be users of the farm workers housed in the project.

(B) A nonprofit organization of farmworkers must have representation on the board from the area where the housing is located. Directors may be elected who are not members of the organization but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board.

(iii) Be prohibited from requiring or preventing employment on any particular farm or farms as a condition of occupancy.

(iv) Except for an organization of farmworkers, be certified as exempt from Federal income taxation.

(9) Be an individual farmowner who is a citizen of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, or the trust territory of the Pacific Islands or residents in one of the foregoing areas after being legally admitted for permanent residence or an indefinite parole. If the applicant is an organization, other than a State or political subdivision, the majority of the members and controlling interests must be individuals who meet the citizenship requirements for individual farmowners as stated above.

(b) *Eligibility of applicant for an LH grant.* To be eligible for an LH grant the applicant must meet the applicable requirements in § 1944.157 (a) and:

(1) Be an organization, as defined in § 1944.153(i) with an assured life over a period of years sufficient to carry out the purpose of providing low-rent housing for domestic farm labor. This should not be less than the anticipated useful life of the project as suitable housing for domestic farm labor, assuming proper maintenance and repair of the property. Ordinarily, this should not be less than 50 years.

(2) When the grant is closed, be the owner (as defined in this subpart) of the housing and related facilities, including the site.

(3) Be unable to provide the necessary housing from its own resources, including any power to levy taxes, assessments, or charges, and be unable to obtain the necessary credit through an LH loan or from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(4) Possess the legal and actual capacity, ability, and experience to incur and carry out the undertakings and obligations required, including the obligations to maintain and operate the housing and related facilities for the purpose for which the grant is made.

(5) Legally obligate itself not to divert income from the housing to any other business, enterprise, or purpose.

(c) *Authorized representative of applicant.* FmHA will deal only with the applicant or its bona fide representative and technical advisers. The authorized representative of the applicant must be a person who has no pecuniary interest in the award of the architectural or construction contracts, management contracts, the purchase of equipment, or the purchase of land for the housing site.

[45 FR 47655, July 16, 1980, as amended at 48 FR 7159, Feb. 18, 1983; 48 FR 44762, Sept. 30, 1983; 50 FR 8590, Mar. 4, 1985]

§ 1944.158 Loan and grant purposes.

LH loans and grants may be made to qualified applicants to:

(a) Build, buy, improve or repair housing as defined in § 1944.153(b).

(b) Purchase and improve the necessary land on which the housing will be located.

(1) The cost of land purchased with loan or grant funds may not exceed its present market value in its present condition. Present market value will be determined by a current appraisal in accordance with Subpart B of Part 1922 of this chapter.

(2) Loan or grants funds will not be used to buy land from a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest, without prior approval of the State Director. In granting this approval the State Director should be sure that the purchase price does not exceed the present market value.

(3) Loan or grant funds may not be used to acquire land in excess of that needed for the housing, including re-

lated facilities, except when the applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the excess land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(c) Develop and install water supply, sewage disposal, streets, storm water retention facilities or areas, and heat and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured adequate right to use of the facility for at least the life of the loan or grant and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the LH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application of extra payments on the LH loan of any subsequent collection by the applicant from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(d) Construct other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services.

(4) Small infirmary for emergency care only when justified.

(5) Laundry room and equipment, including clotheslines, if not provided in the individual units.

(6) Appropriate outdoor recreational facilities and other facilities to meet essential needs.

(7) Child day care facilities when needed and feasible.

(8) Trash retention areas if necessary.

(9) Outdoor lighting in pedestrian areas where use is anticipated after sunset.

(e) Construct office and living quarters for the resident manager and other operating personnel if needed and advantageous to the project and the Government.

(f) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. If individual washer and dryer hookups are provided, clothes washers and clothes dryers may be installed in individual rental units only if the inclusion of such items in individual units is needed and is customary in the area for the type of housing involved and is consistent with the requirement that the construction be undertaken in an economical manner and not constitute elaborate or extravagant items. Otherwise, the clothes washers and clothes dryers must be installed in a central laundry room. The number of washers and dryers must be adequate to serve the tenant needs. Whenever practical, this equipment should be attached to the real property in a manner to prevent easy removal.

(g) Purchase and install essential equipment which upon installation becomes a part of the real estate.

(h) Provide landscaping, foundation planting, seeding or sodding of lawns, and necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(i) Pay related costs such as fees and charges for legal, architectural, engineering, and other appropriate technical and required services. Ordinarily, FmHA will furnish the needed guidance for the development of an LH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation to pay a qualified consulting organization or foundation, operating on a nonprofit basis, charges for necessary services, provided the State Director determines that:

(1) Either (i) the applicant, with available FmHA assistance, cannot meet all requirements for a sound loan or grant without the services, or (ii) the services would permit significant financial savings to the Government, either directly or by lightening the

workload involved in processing applications, and

(2) The charges are reasonable in amount, considering (i) the amount and the purpose of the loan or grant, (ii) the payment ability of the borrower, and (iii) the cost of similar services in the same or similar rural areas.

(j) Pay interest which will accrue during the estimated construction period if interim financing is used [or if loan will be closed using multiple advances on daily interest accrual (DIAS) with annual installment and deferred principal]. In the case of multiple advances when the loan is closed on a predetermined amortization schedule system (PASS) or on DIAS with monthly installments, loan funds will not be used for construction interest. Accrued interest during the construction period will be capitalized when construction is substantially complete and the project is ready for full operation.

(k) Pay normal charges necessary to obtain interim financing.

(l) Pay initial operating expenses up to 2 percent of the development cost for any type applicant except an individual farmowner, family farm corporation or partnership, or an association of farmers.

(m) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.164(q) of this subpart.

[45 FR 47655, July 16, 1980, as amended at 50 FR 8590, Mar. 4, 1985]

§ 1944.159 Rates and terms.

(a) *Amortization period.* Each loan will be scheduled for payment in installments within a period, not to exceed 33 years, as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(c) *Amortization schedule.* LH loans, including subsequent loans closed after May 1, 1985, must be on PASS if the project has year-round occupancy and monthly income. LH loans requiring annual installments due to seasonal income may be closed on the daily interest accrual system (DIAS) with monthly or annual payments. All loans on any project receiving a subsequent loan on or after May 1, 1985, must be converted to PASS if the subsequent loan is on PASS. Accounting and processing payments for PASS loans will be handled under Subpart K of Part 1951 of this chapter.

[45 FR 47655, July 16, 1980, as amended at 50 FR 8591, Mar. 4, 1985; 51 FR 6734, Feb. 26, 1986]

§§ 1944.160—1944.162 [Reserved]

§ 1944.163 Conditions under which an LH grant may be made.

A grant may be made to an eligible applicant only when all of the following requirements can be met:

(a) The applicant will contribute at least one-tenth of the total development cost, obtained from its own resources, including any power to levy taxes, assessments, or charges, with funds from other sources, or with an LH loan. The applicant's contribution must be available at the time of grant closing. If an LH loan is needed, the applicant will file an application for a combination loan and grant at the same time.

(b) The housing and related facilities will fulfill a pressing need in the area in which the housing is or will be located and there is reasonable doubt that such housing can be provided without the grant.

(1) The applicant will furnish FmHA factual evidence of fulfilling a pressing need. This need will be documented in accordance with Exhibits A-1 or A-2 of this subpart, as applicable, and using Exhibit A-4 as a guideline if appropriate.

(2) When appropriate, the District Director may check with sources such as the State Department of Labor,

Bureau of Employment Security, and other reliable sources to verify the information submitted.

(3) If, after evaluating the information furnished by the applicant and additional information that may be provided, the District Director determines that the housing will fulfill a pressing need and that a reasonable doubt exists that the housing can be provided without the grant, the District Director will prepare a narrative statement to support these conclusions.

(c) The housing will be constructed in accordance with Exhibit A-3 of this subpart.

(d) The housing will be constructed in an economical manner and will not be of elaborate or extravagant design or material.

(e) The housing must be durable and suitable for year round use unless the need for such housing is seasonal and year-round occupancy is not practical and will not be needed. Construction of seasonal farm labor housing will be permitted upon a finding of persistent need for migrant farmworker housing in the area and such housing will be used solely by migrant farmworkers while they are away from their residence. Seasonal farm labor housing that will be occupied for six months or less per year by migrant farmworkers while they are away from their residence, will be constructed in accordance with Exhibit I to Subpart A of Part 1924. Farm labor housing that is to be occupied less than year-round but more than six months shall be in substantial conformance with and be easily convertible to the applicable development standards as required by § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter. Such projects that are to be occupied less than year-round but more than six months may be approved after review of the savings in construction costs, the plan for conversion to full compliance with development standards and the long term need for such housing.

(f) Housing will be constructed and designed with the consideration given to selecting the most economic, energy efficient heating (and cooling, if applicable) systems including, but not limited to, insulation in excess of the requirements of Exhibit D of Subpart A of Part 1924 of this chapter (FmHA Instruction 1924-A, Exhibit D); active/passive solar design; building orientation; and sun control measures.

[45 FR 47655, July 16, 1980, as amended at 47 FR 28086, June 29, 1982; 52 FR 8036, Mar. 13, 1987]

§ 1944.164 Limitations and conditions.

(a) *Limitations on use of loan and grant funds.* Among the purposes for which loan and grant funds will *not* be used are the following:

(1) Providing housing for the members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation, or partnership, or an association of farmers. (Immediate family in this instance includes mother, father, brothers, sisters, sons and daughters of applicant(s) and spouse.)

(2) Housing, related facilities, or household furnishings which are elaborate or extravagant in design or material.

(3) Refinancing debts of the applicant.

(4) Moveable-type furnishings or equipment except household furnishings as defined in § 1944.153(c).

(5) Payment of any fees, charges, or commissions to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of the loan.

(6) Payment of any fee, salary, commission, profit, or compensation to an applicant, or any officer, director, trustee, stockholder, member, or agent of the applicant, except as provided in § 1944.158(i).

(b) *Priority in use of grant funds and maximum amount of grant.* (1) *Priority in use of grant funds.* Projects will be authorized for funding by the National and State Offices based on priority to:

(i) Locations where a long range and pressing need exists for farm labor housing because of labor intensive agricultural crop production and a lack of suitable housing.

(ii) Projects where occupants will derive the highest portion of their income from on-farm agricultural work.

(2) *Maximum amount of grant.* The amount of any grant may not exceed the lessor of:

(i) Ninety percent of the total development cost, or

(ii) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will probably be able to repay, with interest, from income from rentals within the financial reach of low-income farmworker families. The availability of rental assistance and Department of Housing and Urban development (HUD) section 8 subsidies will be considered in determining the rentals that farm workers will pay.

(c) *Advance of grant funds.* The times for requesting Treasury Checks representing LH grant funds and depositing such checks in the applicant's supervised bank account will be determined in accordance with § 1944.175. When other funds to help finance the labor housing are being supplied by the applicant from its own resources or from a loan, such other funds will be used before a grant check is requested from the Treasury or deposited in or disbursed from the supervised bank account, as appropriate to comply with § 1944.175.

(d) *Obligations incurred before loan or grant closing.* When the applicant files an application for a loan or grant, the District Director will advise the applicant that construction must not be started and obligations for work materials or land must not be incurred or made before the loan or grant is closed, and that it is the policy of FmHA not to permit loan or grant funds to be used to pay such obligations or reimburse the applicant for such payments. If, nevertheless, the applicant incurs expenses or makes payments for such purposes before the loan or grant is closed, the State Director may authorize the use of loan or grant funds to pay such expenses or reimburse the applicant only when the State Director finds that all the following conditions exist:

(1) The expenses were incurred: (i) After the applicant filed a written application for a loan with FmHA; or (ii) before the date of application as part of a predevelopment loan specifically intended as interim financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or (iii) before the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such expenses from its own resources or from credit from other sources, and failure to authorize the use of loan or grant funds to pay such expenses or reimburse the applicant would impair the applicant's financial position.

(3) The expenses were incurred or payments were made for authorized loan and grant purposes.

(4) Contracts, materials, construction and any land purchase meet FmHA standards.

(5) Payment of the expenses will remove any liens which have attached and any basis for liens that may attach to the property on account of such expenses.

(e) *Grant resolution.* A resolution will be adopted by the applicant's Board of Directors and a certified copy included in the grant docket before a grant is approved.

(1) For a grant accompanied by an LH loan, the form of resolution attached as Exhibit E to this subpart will be used with any necessary changes required or approved by OGC. For a grant not accompanied by an LH loan, the form of resolution will be provided or approved by the National Office, following Exhibit E as closely feasible.

(2) The form of resolution to be adopted by the applicant will contain policy and procedural requirements which should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing FmHA to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

(i) The rentals charged domestic farm labor will not exceed such amounts as are approved by FmHA after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(ii) The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by FmHA.

(iii) In granting occupancy of the housing an absolute priority will be given at all times to domestic farm labor.

(3) The resolution will also authorize the appropriate officers of the applicant to execute a "Labor Housing Grant Agreement," in the format of Exhibit F of this subpart. If changes are required in Exhibit F they must be approved by OGC.

(f) *Conditional obligations to repay grants.* The obligations incurred by the applicant as a condition of the grant will be in accordance with Exhibit F of this subpart.

(g) *Loan resolution or loan agreement.* (1) An organization will have its Board of Directors adopt a loan resolution and furnish a certified copy for the loan docket before loan approval. The resolution will be substantially in the format of Exhibit C of this subpart. Any necessary changes must be approved by OGC.

(2) All other loan applicants will execute a loan agreement in substantially the same format as Exhibit D of this subpart. Any necessary changes must be approved by OGC. The State Director may waive the use of the loan agreement when:

(i) The applicant receives no rental income from its tenants, and

(ii) The applicant is an individual or family farm corporation or partnership. The applicant must agree, and so indicate, that the operation and maintenance of the LH unit(s) are part of the farm operation, and should use Form FmHA 431-2, "Farm and Home Plan," for this purpose, which is available in any FmHA office.

(h) Restrictions on conditions of occupancy. No organizational borrower, other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing. Tenant selection should be in accordance with Exhibit B of subpart C of part 1930 of this chapter. No borrower will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because or race, color, religion sex, age, handicap, marital or familial status or National origin. Each borrower will comply with subpart E of part 1901 of this Chapter and prepare and submit HUD Form 935.2, "Affirmative Fair Housing Marketing Plan," which is available in any FmHA Office.

(i) *Supervisory assistance.* Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government. The provision of Subpart C of Part 1930 of this chapter (FmHA Instruction 1930-C) will be followed.

(j) *Location of housing.* (1) Multifamily type housing designed for year-round occupancy will meet the location requirements as explained in Exhibit A-3 of this subpart.

(2) Single family type housing designed for year-round occupancy, as explained in Exhibit A-3 of this subpart, will be located:

(i) On plotted lots within a subdivision which complies with all local requirements and is developed in accordance with Subpart C of Part 1924 of this chapter; or

(ii) On scattered sites located to meet the location requirements of Subpart C of Part 1924 of this chapter and Part 1944 Subpart A.

(3) Housing designed for seasonal occupancy, whether single family or multifamily type housing may be located on the farm as long as it is not located near farm service buildings and will be situated to allow for possible conversion to full-year occupancy should the need for migrant farmworkers in the area change.

(k) *International review.* Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" for 25 units or more. See FmHA Instruction 1940-J, available in any FmHA office.

(l) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1940 of this chapter.

(m) *Guidelines for projects affecting floodplains.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to FmHA authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency. Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) applies. It should be emphasized, however, that FmHA's response to floodplain development is not limited to the Flood Insurance Program. Pursuant to Executive Order 11988, "Floodplain Management," FmHA shall not fund any housing projects which impact a floodplain unless there is no practicable alternative siting of the project. Applicants, therefore, should concentrate in the early planning stages of this proposal to locating sites which do not impact floodplains. See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

(n) *LH loans to Indians secured by trust or restricted land.* Loans to individuals will be secured by a mortgage on the leasehold interest held by the applicant. The leasehold interest must meet the conditions of § 1944.18(b)(5) of Part 1944 Subpart A. Loans to tribes or tribal corporations will be secured in accordance with §§ 1823.409 and 1823.414(a) of Subpart N of Part 1823 of this chapter (FmHA Instruction 442.11, paragraphs IX and XIV A).

(o) *Refinancing LH loans.* Each borrower must agree to refinance the unpaid balance of the LH loan at the request of FmHA whenever it appears to FmHA that the borrower is unable to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of an LH loan must comply with the restrictions indicated in § 1944.176(c)(2) of this subpart. For all loans closed prior to December 21, 1979, the State Director shall comply and the borrower agrees to, the restrictive provisions of § 1944.200 of this subpart as a condition for the State Director's approval or acceptance of prepayment of the FmHA loan.

(p) *Prepayment of LH loan.* The acceptance of a farm labor housing loan will make the borrower subject to the restrictive-use provisions contained in § 1944.176(c)(2) of this subpart.

(q) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Compliance with the requirements of this Act applies to public bodies and agencies which have the power of eminent domain and/or condemnation. It will be the responsibility of the applicant to provide assistance required for relocation of displaced persons from the site on which a LH project will be located. FmHA loan funds may be increased to cover costs incurred in the relocation of displaced persons from the site over and above the appraised value of the property. Until national FmHA instructions are published the Department regulations found at Part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an LH loan for a project affected by this Act. However, the following should be considered:

(1) Generally, sites which will involve relocation of displaced persons should not be considered if alternative sites are available.

(2) For the purpose of determining the appraisal value of the site to be acquired in respect to LH projects which involve relocation of displaced persons, the designated FmHA multiple family housing appraiser or such other agency designated appraiser shall be used.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981; 48 FR 29121, June 24, 1983; 49 FR 3762, Jan. 30, 1984; 52 FR 19301, May 22, 1987; 52 FR 24288, June 30, 1987; 55 FR 6244, Feb. 22, 1990]

§§ 1944.165—1944.167 [Reserved]

§ 1944.168 Security requirements.

(a) *General.* Each loan will be secured to adequately protect the financial interest of the Government in the loan during its repayment period. The amount of the loan may not exceed the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due interest of any prior liens that will or will likely exist against the security after the loan is closed. If the State Director determines it necessary or advisable to encumber household furnishings purchased with loan funds, the State Director will, with the advice of OGC, issue appropriate instructions setting forth the manner in which household furnishings will be secured.

(b) *Loan to an organization or an association of farmers.* (1) A loan to an organization or an association of farmers which can give a real estate mortgage will be secured by a mortgage on good and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as provided in § 1807.2 (d) of Part 1807 of this chapter (paragraph II D of FmHA Instruction 427.1).

(2) If a first mortgage cannot be obtained, a junior mortgage may be taken provided:

(i) The prior mortgage as affected by the State law does not contain such provisions for future advances, payment schedules, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters which may jeopardize FmHA's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified waived, or subordinated.

(3) If it is impossible for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible

(4) In individual cases, additional security may be advisable to ensure that the loan objectives will be carried out. For example, to provide for more effective management and operation one or more of the following types of security may be required.

(i) A mortgage on other real estate owned by the applicant.

(ii) A pledge, assignment, mortgage or other security interest in income from the housing.

(iii) A cosigner on the promissory note, letter of credit, endorsements, assessments, user agreements, personal liability agreements, or membership subscription agrcements.

(5) As a general policy, personal liability will be required of the members of an association of farmers.

(c) *Loan to an individual farmowner or family farm corporation or partnership.* For every loan to an individual farmowner or family farm corporation or partnership, a real estate mortgage will be taken on the farm, whenever practicable, in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). However, if requested by the applicant, a mortgage may be taken on the units and at least enough land to clearly provide adequate security for the loan as determined by an appraisal. In such cases, the loan must meet the following conditions:

(1) If the tract to be mortgaged is covered by a prior lien which also applies to other land, the tract to be given as security must either:

(i) Be released from the prior lien or subordinated to permit a first lien for the LH loan, or

(ii) Provide adequate security for the entire prior lien debt and the LH loan and comply with § 1944.18(b)(6) of Part 1944 Subpart A.

(2) Personal liability will be required of all stockholders or partners.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981]

§ 1944.169 Technical, legal, and other services.

(a) *Appraisals.* (1) When real estate is taken as security, the property will be appraised by an FmHA employee authorized to make real estate appraisals. Form FmHA 426-1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security. When the security being offered is:

(i) *A farm*, an appraisal will be made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(ii) *Other than a farm, and the units are individual detached dwellings*, an appraisal will be made in accordance with FmHA Instruction 422.3 which is available in Subpart C of Part 1922 of this chapter.

(iii) *Other than a farm, and involves multifamily or dormitory-type housing*, an appraisal will be made in accordance with Subpart B of Part 1922 of this chapter.

(2) If the loan includes funds for purchasing household furnishings or equipment which will not become part of the real estate, a narrative type appraisal, identifying the items, will be prepared by the employee preparing the real estate appraisal. The value placed on such furnishings will be based on comparable selling prices in the area.

(b) *Architectural and engineering services*. Housing and related facilities will be planned and designed to meet the needs of the type of occupants who will likely occupy it. A written contract for architectural or engineering services will be required as outlined in Subpart A of Part 1924 of this chapter.

(c) *Construction and development policies*. (1) *Planning and construction*. Housing and related facilities will be planned in accordance with Subpart A of Part 1924 of this chapter and Exhibit A-3 of this subpart. Construction and development will be performed in accordance with Subpart A of Part 1924 of this chapter.

(2) *Davis-Bacon Act*. Construction financed with the assistance of an LH grant will be subject to Subpart D of Part 1901 of this chapter regarding the Davis-Bacon Act and related requirements.

(3) *Compliance with local codes and regulations*. Planning construction, and operation of housing finance with the LH loan or grant will conform with all applicable Federal, State, and local laws, ordinances, codes, and regulations governing such matters as zoning, construction, heating, plumbing, electrical installation, fire prevention, health and safety, and sanitation. If there are no local or State codes and regulations governing these matters, the State Director will issue appropriate guidelines to insure that the facilities meet all FmHA requirements.

(4) *Land use objectives*. Location of projects shall, to the extent practicable, result in the preservation of Important Farmlands and Forestlands, Prime Rangeland and Wetlands. State Directors will assure that FmHA actions, investments, and programs on non-Federal lands are consistent with State and local land use plans and programs to the extent practicable. In carrying this out, State Directors will:

(i) Attempt to integrate departmental and State and local land use policies and programs.

(ii) Identify and minimize to the extent practicable adverse environmental, economic, and social effects of FmHA projects and programs.

(iii) Provide landholders and other concerned people information about the alternatives to, and the associated environmental, social, and economic implications of proposed actions.

(iv) Refrain from enabling others to irreversibly convert these lands or encroaching or enabling other encroachments on flood plains unless there are no practicable alternatives.

(v) In unusual circumstances when the State Director is unable to make a determination regarding land classification, the State Director will request assistance from the Administrator of the Soil Conservation Service in Washington, D.C.

(d) *Optioning of land*. If a loan or grant includes funds to purchase real estate, an acceptable option to purchase or purchase agreement will be included in the application. After the loan is approved, the District Director will have Form FmHA 440-35, "Acceptance of Option," or other appropriate form of acceptance, completed, signed, and mailed to the seller.

(e) *Insurance*. The State Director will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or may be required when appropriate, to obtain liability insurance.

(f) *Title clearance and legal services.* When the applicant is an organization, or has special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from the OGC. In other cases, the provisions of Part 1807 of this chapter (FmHA Instruction 427.1) regarding title clearance and legal services apply.

(g) *Use of and accountability for loan and grant funds.* Loan and grant funds and any funds furnished by the borrower for authorized purposes will be deposited and handled in accordance with Subpart A of Part 1902 of this chapter.

(1) Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan or grant funds could not be used, should not be deposited in the supervised bank account with loan or grant funds.

(2) For all organizations collateral will be pledged by the financial institution for any loan or grant funds or borrower contribution in accordance with § 1902.7 of this chapter.

(3) Funds may be disbursed from the supervised bank account only for authorized loan or grant purposes.

(h) *Bond counsel.* All public bodies offering bonds as security for the LH loan are required to obtain the services of recognized bond counsel in the preparation of evidence of indebtedness in accordance with § 1942.19 of Subpart A of Part 1942 of this chapter except as provided in paragraph 1 of Exhibit H of this subpart.

(i) *Bonding.* (1) The provisions of Subpart A of Part 1924 of this chapter pertaining to surety bonds are applicable to LH loans and grants.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the official(s) entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily saleable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan or grant funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(j) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract for these services. All such contracts will be subject to review and approval by FmHA and therefore, should be submitted to FmHA before execution by the applicant. Contracts will provide for the types of service to be performed and the amount of the fees to be paid either in lump-sum on the completion of all services or in installments as services are performed. "Legal Service Agreement," Exhibit G of this subpart, may be used.

[45 FR 47655, July 16, 1980, as amended at 46 FR 36112, July 14, 1981; 48 FR 7159, Feb. 18, 1983]

§ 1944.170 Processing preapplications.

(a) *Preapplication.* SF 424.2, "Application for Federal Assistance (For Construction)," with the additional information outlined in Exhibit A-1 or A-2 of this subpart, as applicable, will be submitted to the District Director. This information is used to determine the applicant's eligibility and eliminate any proposals which have little or no chance for funding. The applicant should be instructed not to prepare an application until notified to proceed. General guidance to applicants is provided in the Labor Housing Loan and Grant Application Handbook, Exhibit A.

(b) *Actions by District Director.* The preapplication, with attachments, will be reviewed by the District Director. The District Director will inspect the site and consider its desirability if it appears that the applicant is eligible.

(1) If the preapplication proposes an LH loan of a type and amount within the approval authority of the District Director according to Subpart A of Part 1901 of this chapter, the District Director should determine the applicant's eligibility and execute Form AD-622, "Notice of Preapplication Review Action."

(2) If the preapplication proposes an LH loan and/or grant which requires State Office approval, the preapplication, including the comments and recommendations of the District Director and any additional material considered necessary, will be forwarded to the State Director.

(c) *Actions by State Director.* (1) If the applicant is an organization adopting without change the "Articles and Bylaws" prescribed by State supplements, the preapplication need not be submitted to OGC.

(2) In all other cases involving loans or grants to organizations, the docket, with any questions or comments of the State Director, will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(3) An original and one copy of the appropriate environmental review document required by Subpart G of Part 1940 of this chapter must be completed prior to submitting the docket to the National Office for review.

(4) In cases not receiving a National Office review, the following statement is to be added to the Form AD-622: "You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with Subpart G of Part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval."

(5) Determining amount of grant.

(i) General. The State Director will determine the amount the applicant can obtain from other sources, including an LH loan, and the amount of the grant to be made, within the limits set forth in § 1944.164(b)(2). The State Director will make this determination after thoroughly analyzing the information in the docket and receiving authorization from the National Office.

(ii) Method of determining amount of grant.

(A) The State Director will examine the income of the project based on the estimated rental charges and operating costs of the housing when in full operation to determine the soundness of the operations. When there is any doubt as to the probable soundness due to unrealistic planning of income or operating expenses, or for other reasons, the housing project and its operation will be discussed with the applicant to determine changes which can be made to correct the deficiencies.

(B) When a sound plan of operation has been agreed upon, the State Director will determine the amount of funds that can be expected to be available from other sources, including an LH loan. The State Director will also determine the amount of income available for loan repayments after allowing for reasonable and necessary maintenance costs, payments on debts of the applicant, and the orderly accumulation of an adequate reserve.

(C) The amount of the grants will be the difference between the amount of funds to be provided in accordance with paragraph (c)(3)(ii)(B) of this section, plus any funds available from the applicant's own resources and the total development cost of the project. In no case, however, may the amount of the grant exceed 90 percent of the total development cost.

(6) When the State Director considers it necessary, any preapplication may be sent to the National Office for evaluation and instructions.

(7) The State Director will determine the priority of the preapplication when grant funds are applied for in accordance with § 1944.164(b)(1) of this subpart. If in accordance with those priorities, and after completing

review of the preapplication material and determining the amount of grant, the State Director will notify the District Director of the State Director's determination and authorize the District Director to prepare and execute Form AD-622. The District Director will forward the original to the applicant, a copy to the State Director, and a copy to the case file.

(d) *Accountability.* Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 36267, Sept. 19, 1988; 55 FR 13503, Apr. 11, 1990; 55 FR 25077, June 20, 1990]

§ 1944.171 Preparation of completed loan and/or grant docket.

(a) *Information needed.* If the applicant has been requested to file an application, SF 424.2 (for application submission), and the additional information as outlined in Exhibit A-1 or A-2, as applicable, will be submitted to the District Director.

(b) *District Director's responsibility.* As the information for the loan docket is being developed, the District Director will work closely with the applicant. The District Director will review and verify the information furnished for correctness, adequacy, and completeness. The District Director will determine that the market survey is adequate and that the market survey report is accurate. The District Director will evaluate the manner in which the applicant plans to conduct its business and financial affairs and comment on the adequacy of the management.

(c) *County Committee certification.* County Committees will not be used to review LH loan and/or grant applications.

(d) *Assembly, review, and distribution of complete loan and/or grant docket items.* When all items required for the complete loan and/or grant docket have been furnished, they will be examined thoroughly by the FmHA official who will approve the loan and/or grant to make sure they are properly and accurately prepared and are complete in all aspects, including dates and signatures. The loan and/or grant docket items will be assembled in the following order for distribution after approval:

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for docket	Copy for borrower
Exhibit A-1 (or Exhibit A-2) [2].	Information to be Submitted for Labor Housing (LH) Loan or Grant.	2	0	1-O	1-C.
	Memorandum from the National Office authorizing development of loan docket and loan or grant approval if required by § 1944.170(c). [2]	1		1-O	
AD-622	Notice or Preapplication Review Action	3		2-C	1-O.
SF 424.2	Application for Federal Assistance ((For Construction) (for application submission).	3	1	2-O and 1C	1-C.
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1	1-O	1-C
Exhibit A-1 (or Exhibit A-2) [2].	Information to be Submitted for an LH Loan or Grant.	2	0	1-O	1-C.
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics.	1		1-0	
FmHA 1944-51	Multiple Family Housing obligation—Fund Analysis.	3	3-0 & 2C	1-0	1.
FmHA 400-1	Equal Opportunity Agreement	2		1-O	1-C.
FmHA 400-3 [2]	Notice to Contractors and Applicants	3		2-O and 1C	1-C.
FmHA 400-4	Assurance Agreement	2	1	1	1.
FmHA 400-6 [2]	Compliance Statement	3		2-O and 1C	1-C.
HUD 935.2	Affirmative Fair Housing Marketing Plan	2		2-O and 1C	
	Evidence of Legal Authority (copies or citation of specific provisions of State constitution and statutory authority). [2]	2	1	1-O	1-C.
	Appraisal report with attachments	1		1-O	
FmHA 1940-20 [2]	Request for Environmental Information	1	1	1-O	
FmHA 1940-21	Environmental Assessment For Class I Actions.	1		1-O	

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for docket	Copy for borrower
FmHA 1940-22 [2]	Environmental Checklist For Categorical Exclusions.	1		1-O	1.
Exhibit H Subpart G of Part 1940 [2].	Class II Environmental Assessment	1		1-O	1.
FmHA 426-1	Valuation of Buildings	1		1-O	
FmHA 440-9 [2]	Supplementary Payment Agreement	2	1	1-O	1-C.
Other Loan Docket Items. Preliminary Title Opinion or a title insurance binder, and a copy of deed, purchase contract, or other instrument of ownership, or an option.					
	Proof of Organization (certified copy of charter or articles of incorporation) [1].	2	1	1-O	1-C.
	Certified copies of bylaws or regulations [1]	2	1	1-O	1-C.
	List of names and addresses of officers, directors, and members and membership interest held by each. [1]	2	1	1-O	1-C.
	Certified copy of Loan Resolution [1]	1	1	1-O	1-C.
	Loan Agreement [2]	2	1	1-O	1-C.
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction. [2]	2	1	1-O	1-C.
Exhibit A-5 [2]	Statement of Budget and cash flow	2	1	1-O	1-C.
FmHA 431-2 [2]	Farm and Home Plan	2	1	1-O	1-C.
When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concern prior mortgage(s).					

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[1] When applicant is an organization.

[2] When applicable.

(e) *Submission of docket to State Office.* (1) The loan and/or grant docket needing State Office approval, including comments and recommendations by the District Director, will be submitted to the State Office. The State Director will prepare and include in the docket a memorandum to the District Director which will either require additional information if the material submitted is inadequate or will set forth the conditions of loan approval. The proposed conditions of loan approval must indicate if construction will be financed by multiple advances or interim financing if the loan will be closed on DIAS or PASS, and when the payment will be made, if an annual payment is indicated due to seasonal income.

(i) Loans for multiple advance construction on PASS or DIAS monthly installments will include the cost of construction *less* the cost of interest during construction. To determine the recommended loan amount the District Director should determine the authorized loan amount including construction interest, then subtract the estimated construction interest from the loan amount. Interest during construction will be capitalized as authorized in § 1944.158 (j) of this subpart.

(ii) Loans for interim financed construction may include the cost of interest during construction as authorized in § 1944.158 (j) of this subpart.

(iii) Loans for multiple advance construction on DIAS, with annual installment and deferred principal payments, may include the cost of interest during construction as authorized in § 1944.158 (j).

(2) The advice of the Office of the General Counsel (OGC) should be obtained for all loans and/or grants to organizations and associations of farmers and their comments included in the memorandum to the State Director. If the State Director determines that the loan and/or grant should be approved, the State Director will approve the loan and/or grant and sign the memorandum to the District Director as required by paragraph (e)(1) of this section.

(f) *Submission of docket to National Office.* The final loan and/or grant docket need not be submitted to the National Office unless required by an authorizing memorandum resulting from compliance with § 1944.170.

(g) *Announcement.* When it is determined that a loan and/or grant can be approved, project information will be prepared in accordance with FmHA

Instruction 2015-C which is available in the FmHA State and National Offices.

(h) *Establishing borrower/project data.* Prior to loan approval, the State Director, District Director or a designee will input into the accounting system through field office terminals, the information contained in Form FmHA 1944-50.

[45 FR 47655, July 16, 1980, as amended at 47 FR 36414, Aug. 20, 1982; 49 FR 3762, Jan. 30, 1984; 50 FR 8591, Mar. 4, 1985; 54 FR 29332, July 12, 1989; 55 FR 13503, Apr. 11, 1990]

§ 1944.172 [Reserved]

§ 1944.173 Loan and grant approval—delegation of authority.

The State Director and District Director are authorized to approve loans and/or grants in accordance with this subpart and Subpart A of Part 1901 of this chapter. The State Director may delegate loan or grant approval in writing to State Office employees other than District Directors. No LH grant may be approved by the State Director without the prior consent of the National Office.

(a) *Action before loan or grant approval.* The loan or grant approval official is responsible for reviewing the docket to determine that the proposed loan and/or grant complies with all pertinent regulations, instructions, and directives. In making this review, the approval official will determine that:

(1) The applicant is eligible.

(2) The funds are requested for authorized purposes.

(3) The proposed loan or grant is sound.

(4) The security is adequate for the loan.

(5) All preapproval requirements have been met.

(6) Compliance with Title VI of the Civil Rights Act will be met.

(7) All other requirements will be met.

(b) *Approval of loan or grant.* When a loan or grant is approved:

(1) The approving official will prepare and sign Form FmHA 1944-51 in an original and one copy. The State Director, District Director or a designee will record the obligation of and/or grant funds for the pro through a field office terminal i cordance with the FMI for F FmHA 1944-51 and the MFH Procedure.

(2) The individual obligating loan or grant will record the date time of the obligation and sign F FmHA 1944-51 in accordance with FMI.

(3) The obligation date of loan a or grant funds will be confirm through use of field terminals the lowing work day.

(4) The Finance Office will mail State Office Form FmHA 1944- "MFH Acknowledgement of Obliga Funds/Check Request," confirmi the reservation of funds with the ob gation date inserted as required by t FMI for Form FmHA 1944-57. For FmHA 1944-57 will be prepared a distributed in accordance with t FMI.

(5) Form FmHA 1944-51 *will not* mailed to the Finance Office unle there is an excessive time period which the terminals are not operabl Immediately after confirming the re ervation of funds for not-for-profit o ganizations and public bodies, throug use of the terminal operating statio the State Director will call the Info mation Division in the National Offic as required by Subpart C of Part 201 of this chapter. Notice of approval t the applicant will be accomplished b mailing the applicant's signed copy o Form FmHA 1944-51 on the obligatio date. The State Director, District Director or a designee will record the actual date of applicant notificatio on the original of Form FmHA 1944-51 and include the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

(6) Determine the maximum rental rates to be charged domestic farm labor for occupancy of the housing and advise the applicant, in writing, of these maximum rates. In determining the maximum rental rates due consideration must be given to the income and earning capacity of the prospective occupants of the housing and the cost of operating and maintaining such housing. As a general guide, th

rental charges should not exceed 25 percent of the occupant families' estimated adjusted annual income.

(c) *Disapproval of or adverse action on a loan or grant.* When a loan and/or grant is disapproved or if adverse action is taken, the reasons for such action will be shown on the original Form FmHA 1944-51. Form FmHA 1944-51 will be initialed and dated. The District Director will notify the applicant in writing of the disapproval of or adverse action on the loan or grant and the reasons therefore and advise them of their right to appeal in accordance with Subpart B of Part 1900 of this chapter. The disapproved docket will then be handled in accordance with Form FmHA Instruction 2033-A which is available in any FmHA office. Any appeals as a result of disapproval or adverse action will be handled in accordance with Subpart B of Part 1900 of this chapter.

[45 FR 47655, July 16, 1980, as amended at 50 FR 8591, Mar. 4, 1985]

§ 1944.174 Distribution of loan and/or grant approval documents.

For a loan to an organization, or in special cases, the approved loan or grant docket, including any title evidence, will be sent to OGC by the State Office for preparation of closing instructions and any special legal documents required for closing. The original executed, witnessed loan and grant resolution, or a certified copy of the required loan and grant resolution must be supplied by the applicant in time to be included in the loan or grant docket. If applicable, the docket will also include the proposed grant agreement for OGC review. No docket will be considered which fails to include such a required resolution or proposed agreement. OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

[45 FR 47655, July 16, 1980, as amended at 47 FR 54423, Dec. 3, 1982]

§ 1944.175 Actions subsequent to loan and/or grant approval.

(a) *Interim financing from commercial sources.* Interim financing may be used when a loan or combination loan and grant exceeds $50,000 provided funds can be borrowed at reasonable interest rates from commercial sources for the construction period. When interim commercial financing is used:

(1) The docket will be processed to the stage where the FmHA loan or combination loan and grant would normally be closed. FmHA loan or combination loan and grant funds will be obligated before the applicant proceeds with the final arrangements for interim commercial financing.

(2) The State Director or District Director may deliver a copy of Form FmHA 1944-57 as evidence of FmHA commitment, if necessary, or a letter stating that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions. See Exhibit I of this subpart for a sample letter that may be used.

(3) FmHA will undertake similar functions as if FmHA funds had been advanced from the standpoint of approving construction contracts and the monitoring of construction.

(4) The supervised bank account will normally not be used for funds obtained through interim commercial financing. However, the District Director will approve Form FmHA 1924-18, "Partial Payment Estimate," to insure that funds are used for authorized purposes.

(5) When the interim financing funds have been expended, the FmHA loan or combination loan and grant will be closed and permanent instruments will be issued to evidence the FmHA indebtedness. The FmHA loan or combination loan and grant proceeds will be used to retire the interim commercial indebtedness.

(6) Before the FmHA loan or combination loan and grant is closed, the applicant will be required to provide the district Director with statements from the contractor(s), engineer, and attorney that they have been paid in full in accordance with their contracts or

other agreements and that there are no unpaid obligations outstanding in connection with the construction of the project. See in addition § 1924.6 of Subpart A of Part 1924.

(b) *Multiple advances of LH loan and/or grant funds.* In the event FmHA provides grant only assistance, or if interim commercial financing is not available for a loan or combination loan and grant in excess of $50,000, multiple advances will be used subject to the following:

(1) When relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such funds in the supervised bank account and reduce the amount of required collateral.

(2) Except as indicated in paragraph (b)(1) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract or to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest when authorized, and other expenses, as needed. The borrower will prepare Form FmHA 440-11, "Estimate of Funds Needed for 30-day Period Commencing ——," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director. After the District Director determines that the estimates prepared by the borrower are adequate, the District Director will indicate the amount on Form FmHA 1944-57 in accordance with the FMI and request the amount through field office terminals in accordance with MFH User Procedures. As an example, for a loan and/or grant of $100,000, the advances may made as follows: Assuming that t loan and/or grant will be closed July 1, the borrower will comple Form FmHA 440-11 in sufficient tim so that the the funds will be availab on, the day of loan closing. The es mates should be broken down for th first advance in a manner similar the following:

Construction	$30,00
Land acquisition	5,00
Architectural	4,00
Legal	1,00
Total	40,00

An advance in the amount of $40,00 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440-11, and will be prepared in sufficient time so that the estimate of funds might be broken down as follows:

Construction	$20,00
Architectural	1,00
Total	21,00

The amount will be indicated on Form FmHA 1944-57 and requested through field office terminals. The same procedure will be followed for each advance until the project is completed.

(3) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting a check.* When loan approval conditions can be met, including any real estate lien required, and a date for loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraphs (a) or (b) of this section. The District Director's delegate will then order the loan and/or grant check through the field office terminal so that it will be available on or just before the date set for loan closing.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan and/or grant to be increased or decreased before loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed.

(e) *Cancellation of loan.* Loans and/or grants may be canceled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI) as prescribed in FmHA Instruction 1951-B (available in any FmHA office).

(2) If the loan or grant check is received in the District Office, the District Director will return the check as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

(3) All interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(f) *Handling the loan or grant check.* The loan or grant check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 which is available in any FmHA office and Subpart A of Part 1902 of this chapter.

(g) *Property insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

[45 FR 47655, July 16, 1980, as amended at 47 FR 36414, Aug. 20, 1982; 50 FR 8592, Mar. 4, 1985; 52 FR 8036, Mar. 13, 1987; 53 FR 26590, July 14, 1988; 54 FR 39728, Sept. 28, 1989]]

§ 1944.176 Loan and/or grant closing.

(a) *Applicable instructions.* LH loans and/or grants will be closed in accordance with applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) and State supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent to OGC for additional closing instructions. A family farm corporation or partnership or an association of farmers applicant may use its attorney to close the loan in accordance with applicable loan closing instructions provided the attorney is not a member, officer, director, trustee, stockholder, or partner of the applicant entity. Nonprofit organizations may use an attorney who is a member of their organization. The cost incurred by the organization for legal services must be reasonable and competitive for the area.

(b) *LH grant agreement.* An LH grant agreement, prepared and authorized as provided in § 1944.164(e), will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed with the mortgage or other security instrument in the County Office case file.

(c) *Mortgage.* Unless the OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427-1 (State), "Real Estate Mortgage for ———," will be used. For loans and/or grants to organizations, Form FmHA 427-1 will be modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, style of execution, acknowledgment, and any other provisions.

(1) The mortgage or other instrument will contain the following covenant:

> "The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer."

(2) For all LH loans approved on or after December 21, 1979, the following language shall be included in the mortgage:

> "The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 514 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this 20 year period beginning ——— (the date the last loan on the project is closed). No person occupying the housing shall be required to vacate prior to the close of such 20 year period because of early repayment. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other finan-

cial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the government".

(3) Borrowers whose loans were approved prior to December 21, 1979, and closed on or after that date with the restrictive-use clause in the Mortgage, Loan Resolution, or Agreement should be notified that they have the option of having these instruments modified if they desire to do so. Any cost associated with the modification must, however, be borne by the borrowers. Any action in this regard should be approved by the Office of the General Counsel.

(4) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

"This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (*Date*), which is hereby incorporated herein by reference."

(5) When a loan resolution or loan agreement is *not* used, the following will be included in the mortgage:

(i) "Occupancy of the housing will be limited to domestic farmworkers or migrants as defined in this subpart unless the Government gives prior written approval for other occupancy, except that in no case will a member of the borrower's immediate family occupy the housing."

(ii) "The housing will be operated on a nonprofit basis. The borrower will provide any financial information requested concerning income and expenses connected with the housing."

(6) When the borrower is an organization the mortgage will include the following provision:

"Borrower will not require any occupant of the housing or related facilities, as a condition of occupancy, to work or be employed on any particular farm or other place, or work for or be employed by any particular person, firm, or interest."

(7) For a grant made at the same time as an LH loan, the mortgage securing the loan will contain a provision making it also secure the applicant's obligations under the LH grant agreement. For a grant not made at the same time as an LH loan, the type of security instrument will be determined by the National Office based upon the State Director's recommendation and the advice of OGC.

(d) *Promissory note.* (1) Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be used for all LH loans except those secured by bonds. Payments on LH loans will be scheduled on a monthly or annual basis in accordance with the expected schedule of income from the project. If periodic payments are desired on an annual note they may be scheduled on Form FmHA 440-9.

(2) The note will be dated the date of loan closing as authorized in § 1807.2(f)(8) of Part 1807 of this chapter (paragraph II F 8 of FmHA Instruction 427.1).

(3) In the case of multiple advances on PASS or DIAS monthly installments, payments will be deferred for the period of construction and any remaining period until the project is operational. When construction is substantially complete and/or the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)," the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to § 1944.157(a)(7)(iii) of this subpart. The borrower's payment of principal and interest will be established according to the FMI, for Form FmHA 1944-52, "Multiple Family Housing Promissory Note." At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form FmHA 1944-57. When the MDL at AED is reached or the loan is fully advanced, Finance Office will:

(i) Capitalize the construction interest. When there is a remaining obligation balance, the remaining obligation will be cancelled by the Finance Office.

(ii) Notify the District Office of the new loan amount and the borrower's scheduled loan payment.

(iii) Prepare and forward to the District Office Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" if RA has been obligated for the project.

(iv) The District Office will complete Forms FmHA 1944-52 and FmHA 1944-7 according to the FMI's.

(4) Deferred principal payments may be permitted up to 2 years when determined to be necessary and advisable. Accrued interest must be paid annually when the loan is closed on DIAS; however, smaller than regular payments of principal or no payments of principal may be provided for the first and second installments after loan closing.

(5) The promissory note(s) will be signed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any supplemental instructions from OGC.

(6) After loan closing the original note and copies will be distributed according to the FMI. The loan closing information will be transmitted via the field office terminals when the loan is closed with a promissory note.

(7) For a loan to a public body, the forms of obligation will be determined in accordance with Exhibit H to this of subpart.

(e) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(f) *Date of closing—establishment of account.* (1) An LH loan and/or grant is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan or grant funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan and/or grant is closed, the account and case folder will be established in accordance with applicable FmHA regulations (FmHA Instruction 1905-A which is available in any FmHA office and FmHA Instruction 2033-A which is available in the FmHA State and National Offices.)

[45 FR 47655, July 16, 1980 as amended at 50 FR 8592, Mar. 4, 1985; 51 FR 12308, Apr. 10, 1986; 52 FR 24288, June 30, 1987]

§ 1944.177 Coding loans and grants as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan or grant when the total number of units are built or purchased at one place at one time. A subsequent loan or grant will be so coded when an additional loan or grant is necessary to complete the units planned with the initial loan or grant. As an example, the borrower may obtain initial loans or grant for more than one project in the same district, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 1944-51 and FmHA 1944-57.

[45 FR 47655, July 16, 1980 as amended at 50 FR 8593, Mar. 4, 1985]

§ 1944.178 Complaints regarding discrimination in use and occupancy of Labor housing.

Any tenant or prospective tenant seeking occupancy or use of LH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital or familial status, handicap or National origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC, 20410, or any HUD Office, or to the Secretary of Agriculture, Washington, DC. If the complaint is made to an FmHA county, district or State office, it must be directed to the Director of Equal Opportunity Staff, National Office, by the FmHA employee in charge of that office. When a complaint is sent to FmHA-EOS by a county or district office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent.

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA's housing program failing to comply with the requirements of title VIII, as amended of the Civil Rights Act of 1968, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure.

[55 FR 6244, Feb. 22, 1990]

§§ 1944.179—1944.180 [Reserved]

§ 1944.181 Loan servicing.

LH loans and grants will be serviced in accordance with Subpart B of Part 1924 of this chapter and Subpart C of Part 1930 of this chapter (FmHA Instruction 1930-C). Requests for rent increases will be processed in accordance with Exhibit F of Subpart C of Part 1930 of this chapter (FmHA Instruction 1930-C, Exhibit C).

[45 FR 47655, July 16, 1980, as amended at 45 FR 70738, Oct. 27, 1980]

§ 1944.182 Rental assistance.

Rental assistance may be provided to eligible tenants in LH projects in accordance with Exhibit E of Subpart C of Part 1930 of this chapter. Income will be verified for LH tenants requesting rental assistance from all easily identifiable sources by using Form FmHA 1910-5, "Request for Verification of Employment." Income or portions of income from sources that are not known or not easily contacted will be verified from the best information obtainable. This may include copie payroll records, tenant's own recor contacts with individuals who may knowledgeable of the tenant's incor or, if no other verifiable data is av able, a notarized affidavit from t tenant attesting to his/her previo year's income. The borrower a tenant will execute Form FmHA 194 8, "Tenant Certification." The borro er will be expected to certify only th the income is correctly stated based o the best information available. Th borrower will be expected to have th tenants that occupy the project yea round and do not have easily verifiabl income report monthly income t enable accurate income certification a the end of one year of occupancy.

[45 FR 47655, July 16, 1980, as amended a 45 FR 70777, Oct. 27, 1980; 48 FR 6697, Feb 15, 1983; 50 FR 16056, Apr. 24, 1985; 51 FR 27670, Aug. 1, 1986]

§ 1944.183 Exception authority.

The Administrator of the Farmer Home Administration may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§§ 1944.184—1944.200 [Reserved]

EXHIBITS TO SUBPART D

EXHIBIT A—LABOR HOUSING LOAN AND GRANT APPLICATION HANDBOOK

Introduction.

Development of a proposal for a Labor Housing (LH) loan and grant can be an expensive proposition and the Farmers Home Administration (FmHA), therefore, encourages applicants to develop applications in two phases which are termed preapplication phase and application phase. In development of the items required for the preapplication phase, applicants should understand that the Government is in no way obligated to commit loan or grant funds to the proposed project and therefore, they should not, at this stage, incur expenses for the optioning of land, architectural services, engineering services, or other purposes unless they will be able to use their own funds to pay these expenses. In addition, before the development of a preapplication, applicants should meet with the local FmHA District Director to gain a basic understanding of the eligibility and other requirements of the LH loan and grant program.

Applicants should also be aware that rental assistance (RA) subsidies are available to eligible projects to reduce rents for very low- and low-income farmworkers. RA may be used in conjunction with LH grants to develop feasible LH projects to meet local farmworker housing needs. When at all possible, applicants should consider the use of RA in lieu of a full 90% grant for LH projects with year-round occupancy.

[45 FR 47655, July 16, 1980, as amended at 51 FR 27670, Aug. 1, 1986]

EXHIBIT A-1—INFORMATION TO BE SUBMITTED BY ORGANIZATIONS AND ASSOCIATIONS OF FARMERS FOR LABOR HOUSING LOAN OR GRANT

I. *Information to be submitted with SF 424.2 (for preapplication submission).*

A. *Eligibility.*

1. Financial Statement—A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member who holds an interest in the association in excess of 10 percent. The applicant, must have or be able to obtain initial operating capital of at least 2 percent of the total development cost of the project. A statement should, therefore, be included explaining how such funds will be provided. Loan or grant funds may be used to provide the required initial operating capital for nonprofit and State or local public agencies.

2. All applicants, except State and local public agencies, must provide evidence that they are unable to obtain credit from other sources. Letters from credit institutions who normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided.

3. If a Labor Housing (LH) grant is requested, the applicant should provide a statement on their projected use of Rental Assistance (RA) and their need for a LH grant. This statement should include preliminary estimates of the rents required with and without a grant and the relative need for a grant if RA is provided to supplement market rents for eligible farmworkers. [LH grants and RA are not available to associations of farmers.]

4. A statement of the applicant's experience in operating LH or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience. (i.e., obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

5. A brief statement explaining the applicant's proposed method of operation and management. This does not have to be a full-fledged management plan, as outlined by Exhibit B of this subpart; however, it should generally explain how the applicant proposes to operate the facility. (i.e., on-site manager, contracting for management services, etc.).

6. Applicants must provide a copy of or an accurate citation to the special provisions of State law under which the applicant is or is to be organized, a copy of the applicant's charter, Articles of Incorporation, bylaws, and other basic authorizing documents; names, occupations, and addresses of the applicant's members, directors, and officers; and, if a member or subsidiary of another organization, its name, address, and principal business.

B. *Need and demand.*

A preliminary survey should be conducted to identify the supply and demand for LH in the area. This survey should address or include the following items:

1. The annual income level of farmworker families in the area and the probable income of those farmworkers who are most apt to occupy the proposed unit.

2. A realistic estimate of the number of farmworkers who are home-based in the area and the number of farmworkers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (i.e., single individuals as opposed to families). Much of this information may be available from the local office of the Rural Manpower Services section of the Department of Employment Services.

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative Extension Service office or from the Agricultural Stabilization and Conservation Service.

4. The overall occupancy rate for comparable rental units in the area and rents charged and customary rental practices for these units (i.e., will they rent to large families, do they require annual leases, etc.). This information may be available from census data, local planning organizations, or local housing authorities.

5. The number, condition, adequacy, ownership and rental rates for units currently used or available to farmworkers. This information may be available from local farmworker advocacy groups, Rural Manpower Services, or social service agencies.

6. A general description of the units proposed, including number, type, and size and an estimate of the total development cost and amount of contribution by the applicant. This should also include an estimated projection of the rental rates to be charged.

Note: The market survey is one of the most important determinates of the overall feasibility of the proposed project. Therefore, the applicant may wish to do a more detailed study of the market in accordance with item II J below. Endorsement of the proposal by community leaders will not be required.

C. *Environmental Information.*

When a preapplication is to be submitted to the National Office for review, the applicant will complete Form FmHA 1940-20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this Chapter. The applicant shall provide all information requested; the District Office will provide any assistance necessary in completing this form.

D. *Affirmative Fair Housing Marketing Plan.*

Each applicant will prepare and submit HUD 935.2, "Affirmative Fair Housing Marketing Plan," where they propose developing five (5) or more units. The plan will reflect that occupancy is *not* limited to their employees and they will not discriminate on the basis of race, color, sex, age, handicap, marital or familial status or National origin in regard to the occupancy or use of these units.

E. *Additional Information.*

The following items should be provided only if they are readily available:

1. A map of the proposed site showing the location of the site and supporting information on the neighborhood and available facilities, such as distance to shopping, churches, schools, available transportation, drainage, sanitation facilities, water supply and access to other services such as doctors, dentists, and hospitals.

2. Any available sketches or schematics of the proposed housing including plot plans, building layouts, and construction types.

The information required by the preapplication will be carefully reviewed for eligibility and feasibility by appropriate Farmers Home Administration (FmHA) officials. As soon as a decision is reached, the applicant will be advised of the availability of funds for the project, via Form AD-622, "Notice of Preapplication Review Action."

II. *Information to be submitted with SF 424.2 (for application submission).*

A. After the applicant has received the **signed SF 424.2 authorizing the** applicant to proceed to develop a final application, the applicant and the applicant's architect should meet with the FmHA architect/engineer and other officials responsible for loan processing. During this preprocessing meeting, FmHA will discuss the services which the applicant's architect will be expected to provide and will also explain the items needed to complete the final application such as Form FmHA 1940-20, "Request for Environmental Information," if not previously submitted in the preapplication stage.

If after the preprocessing meeting the applicant believes that the Labor Housing (LH) project can be developed within the guidelines required by FmHA, the following **information should be submitted with SF 424.2:**

B. If applicable, evidence of compliance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

C. Proposed contracts for architectural, engineering, and legal services as applicable. FmHA approval of these contracts should be obtained before execution of the contract.

D. A plot plan and detailed preliminary drawings and specifications prepared in accordance with Subpart A of Part 1804 of this chapter (FmHA Instruction 1924-A). Exhibit A-3 provides FmHA's general philosophy and standards concerning the construction of LH facilities.

E. A detailed cost breakdown of the project for items such as land purchase, right-of-ways, building construction, equipment, utility connections, on-site improvements, architectural and/or engineering services, and legal services. The cost breakdown should itemize labor and material unit costs. If an LH grant is proposed, construction will be subject to the provisions of the Davis-Bacon Act. LH grant applicants should, therefore, obtain a copy of Subpart D of Part 1901 of this chapter which explains the Davis-Bacon requirements.

F. Satisfactory evidence of review and approval of the proposed housing, including compliance with zoning requirements by State and local officials, as required by applicable State or local laws, ordinances, or regulations.

G. If not already provided in the preapplication submittal, a map of the proposed site showing the location of the site in relation to available facilities such as schools, shopping, churches, hospitals, etc. In addition, supporting information should be provided indicating that essential utilities such as sewer, water, electricity, etc., will be available to the project. (See Exhibit A-3 for FmHA's general requirements for location of LH facilities).

H. A description of and justification for any related facilities such as community or multi-purpose type buildings, cafeterias, dining halls, infirmaries, child care facilities, etc. To be included for funding by FmHA, the facilities should not be of extravagant design and their size must be commensurate with the needs of the farmworkers who will occupy the housing facility. Any long-term agreements which are contemplated with other agencies for services such as manpower training, migrant health services, child care, and education programs should be explained and included as justification for the related facilities.

I. A detailed market analysis addressing in detail the preapplication information required under item I B above, "Need and Demand," should be conducted in accordance with the following:

1. The market area (i.e., the area from which tenants can reasonably be drawn for the project) should be clearly identified.

2. Adequate existing units which are currently available or which could become available should be surveyed and information obtained and recorded in a format similar to Exhibit A-4.

3. Individual farmworkers and farmworker groups should be contacted and their ideas obtained concerning the type of housing which would gain the greatest acceptance. (This information may not seem important at the outset of the loan if there is a pressing need for LH, however, to assure a long-term demand for the project, consideration should be given to the views of the prospective tenants).

4. The above items should then be correlated to arrive at a realistic estimate of the total need for units, type of units, estimated occupancy, maximum rental rates which can be charged for the units, and the type of amenities or related facilities which should be provided.

J. Proposed, detailed operating budgets for: (1) The first year of operation, and (2) a typical year's operation. The overall percentage of occupancy should be based upon the data collected in the market analysis. Operating costs should be realistic and should reflect somewhat higher than normal maintenance costs and an allowance for the establishment of a reserve as required by the loan agreement. The budget should be prepared in a format similar to Exhibit A-5.

K. A management plan which includes the applicable items of Exhibit B.

L. When the loan is to be secured by a junior real estate lien, certain agreements will be required from prior lien holders. The local or State FmHA Official will provide the applicable agreements.

M. An option to purchase or other evidence of ability to purchase or evidence of ownership for the proposed site.

III. Submission of final application.

When the final application is assembled it should be submitted to the local FmHA District Office for review and submission to the State Office. As soon as a final decision to approve the loan is reached, the applicant will be notified and advised to proceed with the preparation of final plans and specifications, contract documents, and other items needed to close the loan. *The applicant should not proceed with bid advertisement or contract awards until advised to proceed by FmHA.*

[45 FR 47655, July 16, 1980, as amended at 48 FR 29121, June 24, 1983; 49 FR 3762, Jan. 30, 1984; 53 FR 36268, Sept. 19, 1988; 55 FR 6245, Feb. 22, 1990; 55 FR 13503 and 13504, Apr. 11, 1990]

EXHIBIT A-2—INFORMATION TO BE SUBMITTED BY INDIVIDUALS, FARMOWNERS AND FAMILY FARM CORPORATIONS OR PARTNERSHIPS FOR LABOR HOUSING LOANS

I. Information to be submitted by Individuals, Farmowners and Family Farm Corporation or Partnerships for Labor Housing Loans.

A. *Financial Statement.* Show assets and liabilities of the applicant, each individual farmer, and each farming partnership or corporation of which the individuals are members. Each statement must be signed and dated. Financial statements of family farm corporation or partnership members with less than a ten percent corporate or partnership interest need not be submitted to FmHA.

B. *Other Credit.* All applicants must provide evidence that they are unable to obtain credit from other sources. Applicants should attach letters showing what rates, terms and conditions are available for the project from private credit sources. In seeking other credit, the assets and personal liability of each of the members must be offered if the applicant is a family farm corporation or partnership.

C. *Experience.* Describe the experience of each *member* in owning or operating labor or rental housing. If limited, describe other business experience.

D. *Operation.* Describe the proposed operation of the housing and its relationship to the farm operation. Include the proposed method of tenant selection, unit maintenances, determining rental charges (if any), payment of utilities, etc.

E. *Need.* Describe the farming operations in which the laborers to be housed in the units will be used. Include acreages of each crop or details of other operations. Discuss present laborers and their living arrangements and the number and condition of labor housing now provided.

F. *Continuing Need.* Discuss any possible changes in mechanization or shifts to other farm products that might decrease the need for labor housing in the future.

G. *Proposed Security.* If a mortgage is not being given on the entire farm, explain why not and describe the sites proposed as security. Attach a map showing the site locations, shopping areas, schools, doctors, hospitals, nearest public water and sewer system, and school bus stop.

H. *Proposed Project.* Describe the housing proposed to be bought or built (specify which) and the estimated cost. If building sites are to be purchased, show the cost of each. Attach any options available. List any other expenses expected. Show the total cost, the loan requested, and the applicant contribution.

I. *Environmental Information.* The District Office will advise the application of the applicability of FmHA's environmental requirements under Subpart G of Part 1940 of this Chapter which are primarily based on the size of the proposed project. If the preapplication must go to the National Office for approval, the applicant will complete Form FmHA 1940-20, "Request for Environmental Information." The District Office will provide assistance and guidance to the applicant in completing this form.

J. Each applicant will prepare and submit HUD 935.2, "Affirmative Fair Housing Marketing Plan", where they propose developing five (5) or more units. The plan will reflect that occupancy is limited to their employees and that they will not discriminate on the basis of race, color, sex, age, handicap, marital or familial status or National origin.

II. *Information to be submitted with SF 424.2 (for application submission).*

A. *Supplemental.* Any information requested to clarify or augment information supplied earlier with the preapplication.

B. *Site.* Options to purchase or a copy of deeds and mortgages on sites already owned.

C. *Surveys.* When needed to identify the site, a current survey showing boundaries, geographical features, access to public roads, and public utility location.

D. *Plans, Specifications, and Proposed Contracts.* Attach one copy of each complete set of building plans and specifications and a bid or contract for construction. A complete site plan is also required.

E. *Environmental Information.* If not submitted with the preapplication, the applicant will complete Form FmHA 1940-20 "Request for Environmental Information."

[45 FR 47655, July 16, 1980, as amended at 49 FR 3762, Jan. 30, 1984; 53 FR 3626 Sept. 19, 1988; 55 FR 6245, Feb. 22, 1990; 55 FR 13503 and 13504, Apr. 11, 1990]

EXHIBIT A-3—LABOR HOUSING CONSTRUCTION GUIDELINES

I. *Introduction:* This Exhibit provides the Farmers Home Administration's (FmHA's) general guidelines and policies concerning the planning, location, and construction of housing for farmworkers. The type of housing should be in accordance with the needs of the prospective tenants. Multi-family type units are encouraged whenever possible; however, when planning units for farmworker families, lower density building design and layout is normally desirable. Housing should be designed in such a manner that it will be decent, safe, sanitary and modest in size and cost. Actual plans, specifications, and contract documents should be prepared in accordance with Subpart A of Part 1924.

II. *Types of housing and appropriate standards*

a. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. These type units should meet the following standards:

1. All sites shall be planned and constructed in accordance with Subpart C of Part 1924 of this chapter.

2. All planning and construction other than seasonal farm labor housing and housing to be occupied more than six months but less than year-round shall be in conformance with the applicable development

standard as required by § 1924.5(d)(1) of Subpart A of Part 1924 of this chpater and applicable state and local codes.

b. Multi-family type housing is defined as a project or a number of projects encompassing a building or buildings containing more than one dwelling unit and may include mixtures of detached and multi-unit structures in a project. These type units should meet the following standards:

1. All housing designed for year-round occupancy will be planned in compliance with the applicable development standard and will be compatible with conventional rental type housing.

2. Housing for seasonal occupancy (less than six months) shall be designed and constructed in accordance with Exhibit I to Subpart A of Part 1924 of this Chapter.

3. Housing to be occupied more than six months but less than year-round shall be designed and constructed in substantial conformance with and be easily converted to the applicable development standard requirements for year-round housing.

4. All planning and construction should be in conformance with applicable State and local codes.

[44 FR 59212, Oct. 15, 1979, as amended at 45 FR 39794, June 12, 1980; 47 FR 28086, June 29, 1982; 52 FR 8036, Mar. 13, 1987; 52 FR 19302, May 22, 1987]

Exhibit A-4

SURVEY OF EXISTING LABOR HOUSING

Name of Town ______________

Date of Survey ______________

Name and Address of Rental Units	Number, Size and Monthly Rent of Units in each Project												Project Type **	Age	Condition of	
	*0 or 1 BR			2 BR			3 BR			4 or 5 Br					Bldg.	Area
	No.	Size	Rent	No.	Size	Rent	No.	Size	Rent	No.	Size	Rent				

*Circle Applicable Type Units
If both 0 and 1 Br or 4 and 5 Br units in same project use two lines

** i.e. Number of stories; number of units per building in project. Identify architectural style

[44 FR 59213, Oct. 15, 1979]

FmHA Instruction 1944-D
Exhibit A-5

EXHIBIT-A-5—STATEMENT OF BUDGET AND CASH FLOW

Name of Borrower ______________________________
Address ______________________________
Project Location ______________________________
Kind of Loan ________ Term of Loan ______ Interest Rate _____ Amount $______

	1st Year	Typical Year	Typical Yr w/ Grant	Typical Yr w/o Grant
1. Total Operation and Maintanence Expense (From Reverse)				
2. Transfer to Reserve				
3. FmHA Payment				
4. Return to Ownership@-%				
5. Other Authorized Payments				
6. Authorized Capital Improvements				
7. Total Income Needed (Add lines 1-6)				
Other Income				
8. Laundry				
9. Interest				
10. Other (Specify)				
11. Total Other Income				
12. Rental Income Needed				
Rental Income				
13.___Units@___month,week				
14.___Units@___month,week				
15.___Units@___month,week				
16.___Units@___month,week				
17. Vacancy Allowance	( )	( )	( )	( )
18. Rental Income (Add lines 13-16 less 17)				
19. Excess of (Deficit) (lines 18 less 12)				

Certified Correct

______________________ by ______________________
date Applicant's or Borrower's signature

OPERATION AND MAINTENANCE
EXPENSES:

	(1)	(2)	(3)	(4)
1. Salaries and Wages				
Caretaker	$____	$____	$____	$____
Manager	$____	$____	$____	$____
	$____	$____	$____	$____
2. Utilities				
Water	$____	$____	$____	$____
Sewer	$____	$____	$____	$____
Gas	$____	$____	$____	$____
Electricity	$____	$____	$____	$____
Heating	$____	$____	$____	$____
Garbage and Trash Removal	$____	$____	$____	$____
Telephone	$____	$____	$____	$____
Other	$____	$____	$____	$____
	$____	$____	$____	$____
3. Maintenance				
Janitor's Supplies	$____	$____	$____	$____
Repairs	$____	$____	$____	$____
Building Equipment Repairs	$____	$____	$____	$____
Exterminating	$____	$____	$____	$____
Decorating	$____	$____	$____	$____
Grounds Maintenance	$____	$____	$____	$____
Furniture & Furnishing Replacements	$____	$____	$____	$____
Other	$____	$____	$____	$____
	$____	$____	$____	$____
4. Insurance				
Fire and Extended Coverage	$____	$____	$____	$____
Liability	$____	$____	$____	$____
Compensation	$____	$____	$____	$____
Other	$____	$____	$____	$____
	$____	$____	$____	$____
5. Taxes				
Real Estate	$____	$____	$____	$____
Social Security	$____	$____	$____	$____
Special Assessments	$____	$____	$____	$____
Income	$____	$____	$____	$____
Other	$____	$____	$____	$____
	$____	$____	$____	$____
6. Other Expenses				
Accounting	$____	$____	$____	$____
Legal	$____	$____	$____	$____
Advertising	$____	$____	$____	$____
Interest (FmHA)	$____	$____	$____	$____
Other Interest	$____	$____	$____	$____
	$____	$____	$____	$____
7. Total Operation and Maintenance Expenses (Add Section 1 thru 6) (Total to Line 12 Front Side)	$____	$____	$____	$____

[44 FR 59214, Oct. 15, 1979, as amended at 48 FR 56174, Dec. 19, 1983]

EXHIBIT B—MANAGEMENT PLANS

The management of a rental project, regardless of the type of tenants, is one of the most, if not the most, important determinants of the success or failure of a proposed project.

The management plan, therefore, as the primary management charter should constitute a comprehensive description of the detailed policies and procedures to be followed in managing the project and should as a minimum address the following items:

1. *Staffing.* The number, qualifications required, and duties of all personnel who will be hired to operate the project. Equal employment opportunity should be provided and special consideration should be given to hiring Spanish-speaking persons if warranted by the expected occupancy. Roles and responsibility's of owner and of manager should be specified.

2. *Marketing.* The marketing efforts or techniques which will be used to obtain initial rent up and occupancy of future vacancies (i.e. advertisement, contacts with social service agencies, local farmers, etc.). Definite dates for opening and closing of the project will be spelled out for projects constructed for seasonal purposes.

3. *Tenant selection.* Domestic farm workers must be given absolute priority in renting available units. Other selection criteria should be specifically outlined in the management plan. Arbitrary restrictions as to family size, age of children, or other similar items are prohibited, however, the size of unit assigned to a family should be commensurate with its needs. Rejected tenant applications should be maintained for a minimum of 1 year and applicants must be advised in writing of the reasons for rejection.

4. *Ineligible tenants.* Units can be rented to other than farm workers when they are not needed by farm workers (i.e., during the off season), however, the leases must be on a short-term basis, normally not exceeding 30 days, and ineligible tenants must be advised that they will have to vacate the units if an eligible farm worker becomes available. To avoid future problems, occupancy by ineligibles should be avoided if at all possible. Written permission to rent to ineligibles must be obtained from the District Director before allowing the ineligible tenant to occupy LH projects.

5. *Lease or occupancy agreement.* A copy of any proposed lease or occupancy agreement should be submitted with the plan. The lease or occupancy agreement should clearly outline the responsibilities of the tenant and landlord.

6. *Counseling services.* Pre- and post-occupancy counseling services, which will be provided to tenants by borrowers to acquaint them with the project or otherwise assist them should be thoroughly explained.

7. *Collection of rent.* The system which will be used in the collection of rent must be outlined including proper provisions for the internal control and security of cash collections, followup on overdue accounts, persons responsible for collections, recordkeeping, and conditions for the return of security deposits, if required.

8. *Evictions.* The plan should spell out the specific reasons which warrant eviction and the steps which will be taken to resolve problems before eviction, including provisions for appeal. Voluntary compliance with the lease or occupancy agreement should be emphasized and every effort should be made to utilize the benefits available through local social service agencies and other community organizations.

9. *Maintenance and repairs.* A schedule for preventive maintenance and the procedure for handling service requests from individual tenants, including procedures for the handling of emergency repairs on a 24 hour basis, should be outlined. Management plans for projects constructed for seasonal occupancy will include provisions for off-season maintenance and security.

10. *Records and reports.* The type of recordkeeping system which will be established and the person or persons who will be responsible for keeping records and submitting required reports to FmHA. Subpart C of 1930 of this chapter (FmHA Instruction 1930—C) outlines the reports required and the formats for these reports. This Instruction is available from the local District Office.

11. *Fidelity bonds.* Bonding should be provided for all persons entrusted with the receipt, custody, and disbursement of funds and custody of other negotiable or readily salable personal property. The amount of the bond should be at least equal to the maximum amount of money or property which the individual will have control of at any one time.

12. *Tenant councils.* Tenant councils should be encouraged and should be given an input into proposed changes in lease agreements, staff selection, eviction, and in some cases tenant selection and other management decisions which have a bearing on the tenant's overall situation. Provisions should also be outlined for the democratic election of tenant councils.

13. *Rent increases.* Requested or proposed rent increases should be handled in accordance with Exhibit F of Subpart C of Part 1930 of this chapter. (FmHA Instruction 1930—C, Exhibit C).

14. *Non-discrimination.* The plan should address the policy of non-discrimination in tenant selection and employee hiring in accordance with Form FmHA 400-4, "Non-Dis-

crimination Agreement," and the affirmative action planned in the recruitment of employees and tenants.

15. *Other items.* Any other items which have a bearing on the operation and management of the project.

16. The management plan must be signed and dated by the borrower or the borrower's authorized representative.

[44 FR 59199, Oct. 15, 1979, as amended at 45 FR 70738, Oct. 27, 1980; 47 FR 28086, June 29, 1982]

Exhibit C—Loan Resolution

(LH Insured Loan to Nonprofit Corporation)

LOAN RESOLUTION OF ————————, 19—

RESOLUTION OF THE BOARD OF DIRECTORS OF —————— PROVIDING FOR BORROWING $——— TO FINANCE HOUSING AND RELATED FACILITIES FOR DOMESTIC FARM LABOR, THE COLLECTION, HANDLING, AND DISPOSITION OF INCOME, THE ISSUANCE OF INSTALLMENT PROMISSORY NOTE AND REAL ESTATE SECURITY INSTRUMENT, AND RELATED MATTERS

Whereas ———————————— (herein referred to as "Corporation") is a nonprofit corporation duly organized and operating under (authorizing State statute) ————————;

The Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain housing and related facilities for domestic farm labor;

The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill;

Be it resolved:

1 *Application for Loan.* The Corporation shall apply for and obtain a domestic farm labor housing loan (herein called "the loan") of $—— through the facilities of the United States of America acting through the Farmers Home Administration, United States Department of Agriculture (herein called "the Government") pursuant to title V of the Housing Act of 1949. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide housing and related facilities for domestic farm labor. Such housing and facilities and the land constituting the site are herein called "the housing."

2 *Execution of Loan Instruments.* To dence the loan the Corporation shall iss promissory note (herein referred to as " note"), signed by its President and atte by its Secretary, with its corporate seal fixed thereto, for the amount of the lo payable in installments over a period ——— years, bearing interest at the r of 1 percent per annum, and contain other terms and conditions prescribed the Government. To secure the note or indemnity or other agreement required the Government, the President and Sec tary are hereby authorized to execute a r estate security instrument giving a li upon the housing and upon such other r property of the Corporation as the Gover ment shall require, including an assignme or security interest in the rents and profi as collateral security to be enforceable the event of any default by the Corporatio and containing other terms and conditio prescribed by the Government. The Pre dent and Secretary are further authoriz to execute any other security instrumen and other instruments and documents r quired by the Government in connectio with the making or insuring of the loa The indebtedness and other obligations the Corporation under the note, the relate security instruments, and any related agree ments are herein called the "loan obliga tions."

3 *Equal Opportunity and Nondiscrim ination Provisions.* The borrower wi comply with (a) any undertakings an agreements required by the Governmen pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause," to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

4 *Supervised Bank Account.* The proceeds of the note and the amount of $——— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the super-

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[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

vised bank account exceeding $100,000 shall be secured by the financial institution in advance in accordance with the U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ——— of the Corporation and countersigned by the County Supervisor of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5 *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by Section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6 *General Fund Account.* By the time the loan is closed the Corporation shall from its own funds deposit in the General Fund Account the amount of $———. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations.

7 *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance, normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8 *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9 *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $———— [2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $——— [3] and shall be

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[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the "prepayment reserve," by which the Corporation is "ahead of schedule" as defined in the regulations of the Farmers Home Administration. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeapordizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection 9(b) shall be applied promptly on the loan obligations.

10 *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the ernment, revise the accounts herein pr ed for, or establish new accounts, to c handling and disposition of income and payment of expenses attributable to housing or to any other property secu the loan obligations, and submit to the ernment regular and special reports cerning the housing or the Corporation' nancial affairs.

(d) Unless the Government gives p consent—

(1) Not use or permit use of the hou for any purpose other than as housing related facilities for domestic farm labor.

(2) Not enter into any contract or ag ment for improvements or extensions to housing or other property securing the l obligations.

(3) Not cause or permit voluntary diss tion of the Corporation, nor merge or solidate with any other organization, cause or permit any transfer or encumb ance of title to the housing or any p thereof or interest therein, by sale, mo gage, lease, or otherwise, nor engage in a other new business, enterprise, or ventu than operation of the housing.

(4) Not cause or permit the issuance transfer of any stock, borrow any mone nor incur any liability aside from curre expenses as defined in section 7.

(e) Submit the following to the Gover ment for prior review and approval not le than —— days before the effective date unless approval is waived by the Gover ment:

(1) Annual budgets and operating plans.

(2) Statements of management policy an practice, including eligibility criteria an implementing rules for occupancy of th housing.

(3) Proposed rents and charges and othe terms of rental agreements.

(4) Rates of compensation to officers an employees of the Corporation payable fro or chargeable to any account provided for i this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the

Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11 *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 *General Provisions.*

(a) It is expressly understood and agreed that any loan made will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) The provisions of this resolution are representations to the Government to induce the Government to make a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable, and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the Corporation will permit representatives of the Government to inspect and make copies of any of the records of the Corporation pertaining to this loan. Such inspection and copying may be made during regular office hours of the Corporation, or any other time the Corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and any other instruments or agreements as the "Loan Resolution of (date of this resolution) ———————— 19——."

———————————————————

———————————————————

———————————————————

Certificate

The undersigned, ————————, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ———————— 19——, which has not been altered, amended, or repealed.

————————

(Date)

————————

(Secretary)

[44 FR 59199, Oct. 15, 1979, as amended at 46 FR 36112, July 14, 1981]

EXHIBIT D—LOAN AGREEMENT

(LH Insured Loan to Individual)

1. *Parties and Terms Defined.* This agreement dated ———————— of the Undersigned ————————————————, herein called "Borrower" whether one or more, whose post office address is ————————————————, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of $———————— made or insured, or to be made or insured by the Government pursuant to title V of the Housing Act of 1949 to provide housing and related facilities for domestic farm laborers. Such housing and related facilities, together with the site, may be referred to herein as "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument, and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof,

and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Supervised Bank Account.* The proceeds of the note and the amount of $———— to be contributed by the borrower from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $100,000 shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. As provided therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the borrower shall be made only on checks signed by the ———— of the borrower and countersigned by a representative of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

4. *Accounts for Housing Operations and Loan Servicing.* Borrower shall establish on his books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8(a).

5. *General Fund Account.* By the time the loan is closed Borrower shall from his own funds deposit in the General Fund Account the amount of $————. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. Borrower may also in his discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 6, 7, or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower
in trust for the Government as secu
the loan obligations.

6. *Operation and Maintenance*
Not later than the 15th of each mo
of the General Fund Account shall b
ferred to the Operation and Main
Account sufficient amounts to enab
rower to pay from the Operation an
tenance Account the actual, reasona
necessary current expenses, for the
month and the ensuing month, of op
and maintaining the housing not ot
provided for. Current expenses may
in addition to expenses occurring or
ing due monthly, monthly accumula
proportionate amounts for the paym
items which may become due either
ly or at irregular intervals, such as ta
surance, and normal repair and repla
of furnishings and equipment rea
necessary for operation of the housin
rent expenses may also include initi
chase and installation of such furni
and equipment with any funds depos
and transferred from the General Fu
count which are not proceeds of the l
income or revenue from the housing.

7. *Debt Service Account.* Each mont
mediately after the transfer to the
ation and Maintenance Account pr
for in section 6, or after it is deter
that no such transfer is called for, an
ance remaining in the General Fun
count, or so much thereof as may be
sary, shall be transferred to the Debt
ice Account until the amount in the
Service Account equals the amount o
next installment due on the loan. Fun
the Debt Service Account shall be used
for payments on the loan obligations
until so used, shall be held by Borrow
trust for the Government as security t
for.

8. *Reserve Account.*

(a) Immediately after each transfer t
Debt Service Account as provided in se
7, any balance in the General Fund Acc
shall be transferred to the Reserve Acc
Funds in the Reserve Account may be
only as authorized in this agreement
until so used shall be held by the Borro
in trust as security for the loan obligat
Transfers at a rate not less
$————[1] annually shall be mad
the Reserve Account until the amoun
the Reserve Account reaches the sum
$————[2] and shall be resumed at
time when necessary, because of disbu
ments from the Reserve Account, to rest
it to said sum. Of such sum, at least 50

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[1] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as indicated by footnote 2.

[2] The amount to be inserted will usu
be about 10 percent of the value of
buildings and related facilities finan
wholly or partially with the loan.

cent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of Borrower, consist of an amount, referred to as the "prepayment reserve," by which Borrower is "ahead of schedule" as defined in the regulations of the Farmers Home Administration. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) For any purpose desired by Borrower, provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8(a) to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8(a) and is not agreed between the borrower and the Government to be used for purposes authorized in subsection 8(a) shall be applied promptly on the loan obligations.

9. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that his income will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to his financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or Borrower's financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as labor housing and related facilities for domestic farm laborers.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit the transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(e) Submit the following to the Government for prior review and approval not less than ————days before the effective dates.

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements for occupancy and compensation to employees chargeable as operating expenses of the housing.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing or with any of Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing of Loan.* If at any time it appears to the Government that Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, Borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government to induce the Government to make or insure a loan to Borrower as aforesaid. If Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant hereto, such failure shall constitute default as fully as default in payment of amounts due on the loan. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Upon request by the Government the Borrower will permit representatives of the Government to inspect and make copies of any of the records of the Borrower pertaining to this loan. Such inspection and copying may be made during regular office hours of the Borrower, or any other time the Borrower and the Government finds convenient.

(e) Any provisions of this agreement may be waived by the Government, or changed by agreement between the Government and Borrower to any extent such provisions could legally have been foregone, or agreed to in any amended form, by the Government initially. Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of (date of this agreement)—————— 19——."

Witness ——————————————

Borrower ——————————————

Witness ——————————————

Borrower ——————————————

[44 FR 59199, Oct. 15, 1979, as amended at 46 FR 36112, July 14, 1981]

EXHIBIT E—LOAN AND GRANT RESOLUTION

(Labor Housing Loan and Grant to a Nonprofit Corporation)

Loan and Grant Resolution of ————, 19—— Resolution of the Board of Directors of ——————providing for obtaining financial assistance in the amount $————to aid in financing federally defined low-rent housing and related facilities for low-income domestic farm labor, and related matters.
——————————————
(herein referred to as the "Corpora
organized and operating under
board of (authorizing State
——————————————
tors of the Corporation has det
that—

(a) The Corporation should prov
rent housing and related facilities
income domestic farm labor, as de
title V of the Housing Act of 1949.

(b) The estimated total cash devel
cost of such housing and facilities
to $————.

(c) For such purpose the Corpor
able to furnish from its own r
$————.

(d) The Corporation will need finan
sistance in the amount of $————
the Corporation is unable to obtai
other sources for such purpose upo
and conditions which the Corporatio
reasonably be expected to fulfill.

(e) Of such amount of needed finan
sistance the Corporation will be
repay, with interest at 1% per annu
amount of $————over a rep
period of———years, if the bala
$————is made available to the
ration as a grant.

(f) The housing and related faciliti
fulfill a pressing need in the area in
they are or will be located.

(g) The housing and facilities can
provided without the aid of a grant
amount stated above:

Therefore Be It Resolved:

1 *Application for Loan and Gran*
Corporation shall apply to the
States of America, acting throug
Farmers Home Administration,
States Department of Agriculture (
called "the Government") for a lo
$————and a grant of $——
pursuant to Title V of the Housing
1949. Such loan may be insured by the
ernment. The loan and the grant sh
used only for the specific eligible pu
approved by the Government, in or
provide low-rent housing and related
ties for low-income domestic farm
Such housing and facilities and the
constituting the site may be referr
herein as the "housing."

2 *Execution of Loan and Grant In*
ments. To evidence the loan the Co
tion shall issue a promissory note (h
referred to as "the Note"), signed
President and attested by its Secre
with its corporate seal affixed thereto
the amount of the loan, payable in in
ments over a period of———years, be
interest at a rate not to exceed—pe
per annum, and containing other term

conditions prescribed by the Government. To evidence the obligations of the grant, the Corporation shall execute an instrument in the form attached hereto entitled "Labor Housing Grant Agreement" and referred to herein as the "Grant Agreement," evidencing terms and conditions upon which the grant is made by the Government and the obligations of the Corporation with respect thereto. To secure the note and/or all other obligations and agreements of the Corporation with respect to the loan and the grant, as required by the Government, the President and the Secretary are hereby authorized to execute a security instrument giving a lien upon or security interest in the housing and such other property as the Government shall require, including an assignment of or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation. The President and the Secretary are further authorized to execute any other security and other instruments, agreements, and documents required by the Government for the loan or grant. The indebtedness and other obligations of the Corporation under the note, Grant Agreement, this resolution, the security instrument, and any other instruments and agreements related to the loan or grant are herein called the "loan and grant obligations."

3 *Equal Employment Opportunity under Construction Contracts and Nondiscrimination in the Use of Occupancy and Housing and in Any Other Benefits of the Loan or Grant.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation (a) any undertakings and agreements required by the Government regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1, "Equal Opportunity Agreement," involving an Equal Opportunity Clause to be incorporated in or attached as a rider to each construction contract which exceeds $10,000 in amount and is paid for in whole or in part with loan or grant funds, and (c) Farmers Home Administration Form FmHA 400-4, "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof.

4 *Supervised Bank Account.* The proceeds of the loan and grant and the amount of $——— to be contributed by the Corporation from its own funds and used for approved eligible purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $100,000 shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan and grant obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ———— of the Corporation and countersigned by the County Supervisor or other authorized official of the Farmers Home Administration, and only for the specific eligible purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors of their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan or grant funds are paid in full, any balance remaining in the supervised bank account shall be treated as a refund of loan and grant funds in the same ratio as that between the amounts of the loan and grant, and the supervised bank account shall be closed.

5 *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan or grant obligations continue: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6 *General Fund Account.* By the time the loan and grant are closed the Corporation shall from its own funds deposit in the General Fund Account the amount of $————. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this

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[1] Only loan or grant funds, and borrower's funds to be used for an eligible loan or grant purpose, may be deposited in the supervised bank account.

resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

7 *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan and, unless the Government gives prior written consent, are not income or revenue from the housing.

8 *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations while they continue and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

9 *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan and grant obligations. Transfers at a rate not less than $————[2] annually shall be made to the Reserve Account until the amount Reserve Account reaches the su $————[3] and shall be resumed time when necessary, because of dis ments from the Reserve Account, to r it to said sum. Of such sum, at least 5 cent shall be maintained on a cash bas ferred to herein as the "cash reserve." the cash reserve reaches the requir percent of said sum, all or any porti the balance of said sum may, at the o of the Corporation, consist of an am referred to herein as the "prepaymer serve," by which the Corporation is " of schedule" as defined in the regulatio the Farmers Home Administration. F in the cash reserve shall be deposited separate bank account or accounts ins by the Federal Deposit Insurance Cor tion or invested in readily marketable gations of the United States, the ear on which shall accrue to the Reserve count.

(b) With the prior consent of the Gov ment, funds in the Reserve Account ma used by the Corporation—

(1) To meet payments due on the loan ligations in the event the amount in Debt Service Account is not sufficient the purpose.

(2) To pay costs of repairs or replacem to the housing caused by catastrophe long-range depreciation which are not rent expenses under section 7.

(3) To make improvements or extensi to the housing.

(4) For other purposes desired by the C poration which in the judgment of the G ernment likely will promote the loan grant purposes without jeopardizing coll ibility of the loan or impairing the adequ of the security, or will strengthen the se rity, or will facilitate, improve, or maint the orderly collectibility of the loan.

(c) Any amount in the Reserve Accou which exceeds the sum specified in sub-s tion (a), and is not agreed between the C poration and the Government to be used f purposes authorized in subsection (b) sh be applied promptly on the loan obligatio

10 *Regulatory Covenants.* So long as t loan or grant obligations continue, the C poration shall—

(a) Impose and collect such fees, asses ments rents, and charges that the income the Corporation will be sufficient at a times for operation and maintenance of th housing payments on the loan obligation and maintenance of the accounts herein provided for.

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[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as the total amount of the Reserve Account.

[3] The amount to be inserted will usuall be about 10 percent of the value of th buildings and related facilities finance wholly or partially with the loan and grant

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts to cover handling and disposition of income from the payment of exenses attributable to the housing or to any other property securing the loan or grant obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs, including any information required by the Government regarding income of the occupants of the housing.

(d) Unless the Government gives prior consent—

(1) Not use or permit use of the housing for any purpose other than as low-rent housing and related facilities for low-income domestic farm labor, as those terms are defined by the Government.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan or grant obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor transfer or encumber title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or other conveyance or encumbrance, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in Section 7.

(e) Submit the following to the Government for prior review not less then ——— days before the effective dates:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements for occupancy of the housing.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under this resolution, the note, Grant Agreement, security instrument, and any related agreement executed by the Corporation in connection with the loan or grant.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan and grant obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan or grant obligations, or the security.

11 *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 *General Provisions.* (a) It is understood and agreed by the Corporation that any loan or grant will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan and grant, enforce such limitations, and protect the Government's financial interest in the loan and grant and the security.

(b) The provisions of this resolution are representations of the Corporation to induce the Government to make or insure a loan or make a grant to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any of its loan or grant obligations, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of default, the Government at its option may declare the entire amount of the loan and grant obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the corporation will permit representatives of the Government to inspect and make copies of any of the records of the corporation pertaining to the financial assistance. Such inspection and copying may be made during regular office hours of the corporation, or any other time the corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and elsewhere as the "Loan and Grant Resolution of (date of this resolution) ———————— 19——."

Certificate

The undersigned, ————————, the Secretary of the corporation identified in the foregoing resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ———————— 19——, which has not been altered, amended, or repealed.

Date ————————————————

Secretary ————————————————

[SEAL]

[44 FR 59199, Oct. 15, 1979, as amended at 46 FR 36112, July 14, 1981]

EXHIBIT F—LABOR HOUSING GRANT AGREEMENT

THIS AGREEMENT dated ————————, 19——, between— ————————————————

————————————————————————

which is organized and operating under

————————————————————————

———————————— (Authorizing statute)—herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

Whereas Grantee has determined to undertake a project of acquisition, construction, enlargement and/or capital improvement of a Labor Housing Project to serve domestic farm laborers at an estimated cost of $———— and has duly authorized the undertaking of such project.

Grantee is able to finance not more than $———— of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable rental rate.

Said sum of $———— has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed $———— subject to the terms and conditions established by the Grantor. Provided, however, that the pro-
portionate share of any grant fund
advanced and not needed for grant
shall be returned immediately to t
or. The Grantor may terminate th
whole, or in part, at any time b
date of completion, whenever it
mined that the Grantee has
comply with the conditions of the

Now therefore, in consideratio
grant by Grantor to Grantee, to
pursuant to Section 516 of the Ho
of 1949 for the purpose only of de
part not to exceed —— percent of t
opment costs, as defined by a
Farmers Home Administration inst

Grantee agrees that Grantee will:

A. Cause said project to be con
within the total sums available to it
ing said grant, in accordance
project plans and specifications
modifications thereof prepared by
and approved by Grantor.

B. Permit periodic inspection of
struction by a representative of
during construction.

C. Manage, operate and maint
project, including these units if le
the whole of said project, continuous
efficient and economic manner.

D. Make services of said project
within its capacity to all domestic far
ers in borrowers/grantees service are
out discrimination because of race,
religion, sex, age, handicap, marital o
ial status, or National origin at rea
rental rates, whether for one or mor
of units, adopted by resolution dated
——, as may be revised from time to t
Grantee. The initial rental rates m
approved by the Grantor. Thereafter,
ee may not make changes to the rent
structure without prior authorizatio
the Grantor.

E. Adjusts its operating costs and
charges from time to time to provi
adequate operation and maintenance,
gency repair reserves, obsolescence re
debt service and debt service reserves.

F. Provide Grantor with such perio
ports as it may require and permit pe
inspection of its operations by a repre
tive of the Grantor.

G. To execute Form FmHA 400-1, "
Opportunity Agreement," and to e
Form 400-4, "Assurance Agreement,"
execute any other agreements requir
Grantor which Grantee is legally autho
to execute. If any such form has been e
ed by Grantee as a result of a loan
made to Grantee by Grantor contempo
ously with the making of this grant, an
form of the same type need not be exe
in connection with this grant.

H. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The Provisions of this Grant agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grantee Agreements or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

I. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

J. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its sucessor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions.

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

K. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the FmHA.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to FmHA sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than $1000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of $1000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and
condition of the property and th
information was reported; and ult
position data including sales pri
method used to determine cu
market value if the Grantee reiml
Grantor for its share.

(b) A physical inventory of prop
be taken and the results reconcilec
property records at least once
years to verify the existence, curre
tion, and continued need for the pr

(c) A control system shall be in
insure adequate safeguards to pre
damage, or theft of the property.
damage, or theft of nonexpendable
shall be investigated and fully doc

(d) Adequate maintenance pr
shall be implemented to keep the
in good condition

(e) Proper sales procedures shall
lished for unneeded property whic
provide for competition to the exter
cable and result in the highest
return.

This Grant Agreement covers the
ing described nonexpendable prope
continuation sheets as necessary).

L. Provide Financial Manageme
tems which will include:

1. Accurate, current, and complete
sure of the financial results of eac
Financial reporting will be on an
basis.

2. Records which identify adequat
source and application of funds for
supported activities. Those record
contain information pertaining to
awards and authorizations, obligatio
obligated balances, assets, liabilitie
lays, and income.

3. Effective control over and accou
ity for all funds, property and other
Grantees shall adequately safegua
such assets and shall assure that th
used solely for authorized purposes.

4. Accounting records supported by
documentation.

M. Retain financial records, supp
documents, statistical records, and all
records pertinent to the grant for a
of at least three years after grant c
except that the records shall be ret
beyond the three-year period if audit
ings have not been resolved. Micr
copies may be substituted in lieu of or
records. The Grantor and the Compt
General of the United States, or an
their duly authorized representatives,
have access to any books, docum
papers, and records of the Grantee's go
ment which are pertinent to the sp
grant program for the purpose of ma
audits, examinations, excerpts and
scripts.

N. Provide information as requeste
the Grantor to determine the need for

complete any necessary Environmental Impact Statements.

O. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

P. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

Q. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item J above.

R. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

S. Pay all laborers and mechanics employed by contractors and subcontractors wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

T. In construction contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

U. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 1875C-9) and Section 308 of the Water Pollution Control Act specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As condition for the award of contract to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor agrees that it: A. Will make available to Grantee for the purpose of this Agreement not to exceed $———— which it will advance to Grantee to meet not to exceed —— percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

————————————————

and attested and its corporated seal affixed by its duly authorized

————————————————

ATTEST:

By ————————————————

(Title)

By ————————————————

(Title)

UNITED STATES OF AMERICA, FARMERS HOME ADMINISTRATION

By ————————————————

(Title)

[44 FR 59199, Oct. 15, 1979, as amended at 55 FR 6245, Feb. 22, 1990]

EXHIBIT G—LEGAL SERVICE AGREEMENT

Agreement made this ———— day of ————, 19——
between the ————,
hereinafter called the owners, and ————,
hereinafter called the attorney, witnesseth:

Whereas the owners intent to form a corporation, hereinafter called the corporation, to construct and operate a labor housing project in

Town ————————————————

County————————————————

State————————————————

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1 Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2 Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation and adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3 Review of construction contract, bid letting procedure, and surety and performance bonds.

4 Examination of real estate titles and preparation, review, and recording of deeds and any other instruments.

5 Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6 Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration, United States Department of Agriculture.

7 Owners agree to pay to the attorney for professional services in accordance with this agreement, as follows:

————————————————

————————————————

The fees to be payable in the following manner and at the following times:

————————————————

————————————————

The attorney states and agrees that of the above total fees, ———— represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within —— days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this ———— day of ————, 19——.

Attorney: ————————————————

Owners: ————————————————

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[44 FR 59199, Oct. 15, 1979]

EXHIBIT H—INFORMATION PERTAINING TO PREPARATION OF NOTES OR BONDS AND BOND TRANSCRIPT DOCUMENTS FOR PUBLIC BODY APPLICANTS

This Exhibit includes information for use by public body applicants in the preparation and issuance of evidences of debt ("bonds" or "debt instruments"). This information is made available to applicants as appropriate for application processing and loan docket preparation.

(1) *Policies.* (i) This Exhibit outlines the policies of the Farmers Home Administra-

tion (FmHA) with respect to preparation and issuance of evidences of debt (hereinafter sometimes referred to as "bonds" or "debt instruments").

(ii) Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized Bond Counsel with respect to the validity of a bond issue. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized Bond Counsel firm which has had experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(iii) At the option of the applicant for issues of $250,000 or less, Bond Counsel may be used for the issuance of a final opinion only and not for the preparation of the other documents and of the bond docket when the applicant, FmHA, and Bond Counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(iv) At the option of the applicant and with the prior approval from the National Office of FmHA, for issues of $50,000 or less, the applicant need not use Bond Counsel if:

(A) The amount of the issue does not exceed $50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(B) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what Bond Counsel would charge as compared with what the local attorney will charge without Bond Counsel.

(C) The local attorney is able and experienced in handling this type of legal work.

(D) The applicant understands that, if it is required by FmHA to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a Bond Counsel's opinion at that time.

(E) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to accepted methods of preparation of similar bonds in the area.

(F) Many matters necessary to comply with FmHA requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions in addition to any requirements of Bond Counsel will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA.

(2) *Bond transcript documents.* Any questions with respect to FmHA requirements should be discussed with local FmHA representatives. Bond Counsel is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA:

(i) Copies of all organizational documents.

(ii) Copies of general incumbency certificate.

(iii) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(iv) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(v) Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(vi) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(vii) Specimen bond, with any attached coupons.

(viii) Attorney's no-litigation certificate.

(ix) Certified copies of resolutions or other documents pertaining to the bond award.

(x) Any additional or supporting documents required by Bond Counsel.

(xi) For loans involving multiple advances of FmHA loan funds, a preliminary approving opinion of Bond Counsel if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(xii) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized Bond Counsel including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation.

(3) *Interim financing from commercial sources during construction period for loans of $50,000 or more.* In all cases where it is possible for funds to be borrowed at reason-

able interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds.

(4) *Permanent instruments for FmHA loans to repay interim commercial financing.* Such loans will be evidenced by one of the types of instruments in the order of preference shown in paragraph (a)(5) of this Exhibit.

(5) *Multiple advances of FmHA funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods. FmHA loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(i) *First preference—Form 1944-52.* If legally permissible, use Form FmHA 1944-52, "Multiple Family Housing Promissory Note."

(ii) *Second preference—single instrument with amortized installments.* If Form FmHA 1944-52 is not legally permissible, use a single instrument showing on the face the full amount of the loan and providing for amortized installments with provisions for entering the date and amount of each FmHA advance on the reverse thereof or an attachment to the instrument. Form FmHA 1944-52 should be followed to the extent possible. The first amortized payment will be due one amortized payment period following the AED.

See the FMI for Form FmHA 1944-52 for specific instructions.

(iii) *Third preference—single instrument with installments of principal plus interest.* If a single amortized installment instrument is not legally permissible, use a single instrument providing for specified installments of principal plus accrued interest. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(A) The repayment terms described in paragraph (a)(5)(ii) of this Exhibit "Second preference" apply.

(B) The instruments shall contain in substance the following provisions:

(*1*) A statement of principal maturities and due dates.

(*2*) Payments made on indebtedness evidenced by this instrument, regardless of when made, shall be applied first to interest due through the date of payment and next to principal except that payments made from security depleting sources shall, after payment of interest to the payment date, be applied to the principal last to become due under the instrument and shall not affect the obligation of the borrower to pay the remaining installments as scheduled.

(iv) *Fourth preference.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (7) of this Exhibit. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (5)(iii) of this Exhibit.

(6) *Multiple advances of FmHA funds using temporary debt instrument.* When none of the instruments described in paragraph (5) of this exhibit are legally permissable or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of FmHA loan funds and will be for the full amount of the FmHA loan. The instrument will be prepared by Bond Counsel and approved by the State Director and OGC. At the same time FmHA delivers the last advance, the borrower will deliver the permanent bond instrument to FmHA to replace the temporary debt instrument and the canceled temporary instrument will be delivered to the borrower. The approved debt instrument will show at least the following:

(i) The date from which each advance will bear interest.

(ii) The interest rate.

(iii) A payment schedule providing for interest on outstanding principal at least annually.

(iv) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(7) *Minimum bond specifications.* The provisions of paragraph (7) are of this Exhibit minimum specifications only, and must be followed to the extent legally permissible.

(i) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or Serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for either repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA. Coupon bonds will not be used unless required by statute.

(ii) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name of "United States of America, Farmers Home

Administration," and will remain so registered at all times while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the FmHA Finance office.

(iii) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(iv) *Date of bonds.* Bonds will be dated as of the day of delivery.

(v) *Payment date.* Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixty or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month. Borrowers scheduled to make monthly payments will be given a monthly payment card jacket at the time of loan closing. These borrowers will submit payment directly to the Finance Office.

(vi) *Place of payment.* Payments on bonds urchased by FmHA should be submitted to he FmHA Finance Office by the borrower.

(vii) *Redemptions.* Bonds should contain ustomary redemption provisions, subject, owever, to unlimited right of redemption ithout premium of any bonds held by mHA except to the extent limited by the rovisions under the "Third Preference" nd "Fourth Preference" in paragraph (5) f this Exhibit.

(viii) *Additional revenue bonds.* Parity onds may be issued to complete the roject. Otherwise, parity bonds may not be sued unless the net revenues (that is, nless otherwise defined by the State statte, gross revenues less essential operation nd maintenance expense) for the fiscal ear preceding the year in which such arity bonds are to be issued were 120 pernt of the average annual debt service reuirements on all bonds then outstanding d those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued without restriction.

(ix) *Scheduling of FmHA payments when joint financing is involved.* In all cases in which FmHA is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA payments of principal and interest should approximate amortized installments.

(x) *Precautions.* The following types of provisions in debt instruments should be avoided.

(A) Provisions for the holder to manually post each payment to the instrument.

(B) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA, may post the date and amount of each advance or repayment on the instrument.

(8) *Bidding by FmHA.* Where a public bond sale is required by State statutes, FmHA will not normally submit a bid at the advertised sale unless State statutes require a bid to be submitted. Preferably FmHA will negotiate the purchase with the applicant subsequent to the advertised sale if no acceptable bid is received. In those cases where FmHA is required to bid, the bid will be made at the applicable FmHA interest rate.

[44 FR 59199, Oct. 15, 1979, as amended at 50 FR 8593, Mar. 4, 1985]

EXHIBIT I—GUIDE LETTER FOR USE IN INFORMING INTERIM LENDER OF FMHA'S COMMITMENT

Name and Address of Private Lender ______

____

____

Dear________________:

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final drawings, specifications, and all other contracts documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA 1944-57, 'Multiple Family Housing Acknowledgement of Obligated Funds/Check Request.

The applicant has been required by FmHA to deposit $———— with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA District Director.

We have scheduled the Farmers Home Administration loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved contract documents, drawings and specifications (except for minor punch list items), and the applicant provides evidence indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,]• drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance.

The following are additional safeguar help assure FmHA loan closing:

1. We invite you or your representativ accompany FmHA personnel during struction inspections so that at least 3 joint inspections at critical points du construction (including the final ins tion), can be made to help assure that struction is proceeding in accordance the FmHA approved drawings and specif tions.

2. FmHA will maintain its commitment the amount of the obligated loan funds a reasonable period of time after the expi tion of any specified completion dates, p vided work on the project is progressing s isfactorily and any identified problems ha been resolved.

3. FmHA will not arbitrarily abandon yo lending institution in the event of defau Should the contractor default, FmHA w attempt to provide financial assistance the applicant in accordance with our admin istrative procedures and lending require ments, provided a new contractor can com plete the project for a total cost within th security value of the project. If this is no possible, or should the FmHA loan appli cant become unable or unwilling to continue with the project, FmHA also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances, such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed, may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. It is a general practice for FmHA to make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available, the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

———————————

State Director.

[44 FR 59199, Oct. 15, 1979, as amended at 50 FR 8593, Mar. 4, 1985]

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 2159, Jan. 26, 1988, unless otherwise noted.

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) loans under Sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objective.

The basic objective of RRH loans is to provide eligible tenants with economically designed and constructed rental housing and related facilities suited to their living requirements.

§§ 1944.203—1944.204 [Reserved]

§ 1944.205 Definitions.

Accessible. When used in respect to the public and common use areas of a building containing covered multifamily dwellings, means that these areas of the building can be approached, entered, and used by individuals with handicaps.

Amortization effective date (AED). A date established by the accounting system on which advanced principal and any accrued interest is combined and amortized to establish a schedule of payments. This date is always the first day of a month.

Board and directors. The governing body and members of the governing body of an organization.

Community. Cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area and are easily identifiable as established concentrations of inhabited dwellings located in rural areas as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

Congregate housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Consumer cooperative. A corporation which:

(1) Is organized as a cooperative;

(2) Will operate the housing on a nonprofit basis solely for the benefit of the occupants; and

(3) Is legally precluded from distributing, during the life of the loan, any gains or profits from operation of the housing. For this purpose, any patronage refunds to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

Dealer-contractor. A person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractors will be qualified as shown in paragraphs IX and X of Exhibit F of Subpart A of Part 1944 of this chapter, except all processing will be handled by the District Director rather than the County Supervisor.

Development cost. The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. Costs that can be paid for with RRH loan funds are detailed in § 1944.212 of this subpart.

Disabled Person. (See Exhibit B of subpart C of part 1930)

Dwelling Unit. A residence for a family of one or more persons, and includes, in addition to those that would normally come to mind, units in which sleeping accommodations are provided but toileting or cooking facilities are shared, such as dormitories or shelters for the homeless.

Elderly household. A household where the tenant or co-tenant is at least 62 years of age, handicapped, or disabled as defined in § 1944.205(h) of this subpart. An elderly household may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped, or disabled person's care and well-being. (To receive an elderly household deduction, the elderly, handicapped, or disabled person must be the tenant or co-tenant.)

Elderly (Senior Citizen). A person who is at least 62 years old. The term elderly (senior citizen) also means persons with handicaps or disabilities, regardless of age as defined herein.

(a) Disabled person with disability. A person who is considered disabled if the person meets the criteria of either of the following:

(1) The person has an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which:

(i) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death,

(ii) Substantially impedes the ability to live independently,

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(2) In the case of a blind person who is at least 55 years old (within the meaning of blindness as determined in section 223 of The Social Security Act), is unable, because of the blindness, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

NOTE: Receipt of veteran's benefits for disability, whether service oriented or otherwise, does not automatically establish disability.

(b) The person has a developmental disability; a severe, chronic disability which:

(1) Is attributable to a mental or physical impairment or combination of mental or physical impairment;

(2) Was manifested before age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care

(ii) Receptive and expressive language

(iii) Learning

(iv) Mobility

(v) Self-direction

(vi) Capacity for independent living

(vii) Economic self-sufficiency

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

(c) Handicapped person is a person with a physical or mental impairment that:

(1) Is expected to be a long-continued and indefinite duration;

(2) Substantially impedes the person's ability to live independently and could be improved by more suitable housing conditions;

(3) Is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

(d) The term handicapped (or handicap) further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special senses organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatics; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addition (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(e) Major life activities means functions such as caring for one's self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(f) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of major life activities.

(g) Is regarded as having an impairment means;

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has one of the impairments defined in paragraph (d)(1) and (d)(2) of this definition but is treated by another person as having such an impairment.

Elderly family. A household where the tenant or co-tenant is at least 62 years old or is disabled or handicapped as defined in this section. An elderly family may include a person(s) younger than 62 years of age who is essential to the care of the disabled and/or handicapped person's care and well being. (To receive an elderly family deduction, the elderly, disabled or handicapped person must be the tenant or co-tenant.)

Eligible tenants. Elderly, handicapped, or disabled persons and very low-, low-, or moderate-income households or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who meet the eligibility requirements of Exhibit B to Subpart C of Part 1930 of this chapter. In the case of cooperative housing projects, all members (occupants) must have a very low, low, or moderate income except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of his/her membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Familial Status. One or more individuals (who have not attained the age of 18) being domiciled with: (i) A parent or another person having legal custody of such individual or individuals; or, (ii) the designee of such parent or other person having such custody, with the written permission of such parent or other person, or a person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18.

Gains or profits. For the purpose of paragraph (y) of this section, gains and profits do not include dividends payable on stock which is nonvoting, limited as to the amount of dividends that can be paid thereon and limited as to liquidation value in the event of corporate dissolution.

Group home. Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can be a multi-unit structure.

Handicap. (See Exhibit B of subpart C of part 1930)

Household. One or more persons who maintain or will maintain residency in one rental unit, but not including a resident assistant or chore service worker.

Individual. A natural person.

Initial operating capital. Cash or a pledge, in the form of an irrevocable letter of credit, to provide cash to pay for costs such as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms and other initial operating expenses. The initial operating capital will be at least 2 percent of the total development cost of the project.

Interested Parties. Any person who has or will have a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this title or the planning, development, or implementation of the project or activity. Residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

Irrevocable Letter of Credit. Is a commercial banking instrument used as an unencumbered and standby liquid asset in lieu of cash.

Limited partnership. A partnership consisting of one or more general partners who are jointly and severally responsible for conducting the business of the partnership, and one or more special partners contributing cash in a specific amount as capital to the common stock, who are not liable for the debts of the partnership beyond the funds contributed.

Limited profit basis. An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in § 1944.215 of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

Low-income household. A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office.)

Manufactured home (unit). A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and Farmers Home Administration (FmHA) thermal requirements. Manufactured homes are described further in Exhibit J of Subpart A of Part 1924 of this chapter.

Manufactured home rental project. A parcel(s) of land located in the same community which contain two or more manufactured home units on each parcel for rental occupancy and operated under one management plan with one loan agreement/resolution.

Maximum debt limit (MDL). The maximum amount that FmHA will lend for a project based on the lesser of appraised value or total development cost multiplied by 97 percent for a limited profit operation or 102 percent for a nonprofit operation.

Moderate-income household. A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Modification. Any change to the public or common use areas of a building or any change to a dwelling unit to comply with handicap accessibility.

OGC. The Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

Organization. A private nonprofit corporation, profit corporation, consumer cooperative, association, State or local public agency, trust, partnership, or limited partnership.

Other Government Assistance. Any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form or direct or indirect assistance.

Owner-builder. A qualified builder-applicant who has experience and has demonstrated the ability and capability to build an RRH project.

Pecuniary Interest. Financial concern or financial gain.

Private nonprofit corporation. A corporation which:

(1) Is controlled by private persons or interests;

(2) Is organized and operated for purposes other than making gains or profits for the corporation or its members;

(3) Is legally precluded from distributing to its members any gains or profits during its existence; and

(4) In the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

Project. The total number of rental housing units that are operated under one management plan with one loan agreement/resolution.

Public use area. Interior or exterior rooms or spaces of a building or any iange to a dwelling unit to comply ith handicap accessibility.

Resident assistant. A person(s) resid- g in a housing unit who is essential the well-being and care of the elder- , handicapped, or disabled person(s) siding in the unit and who is not re- ted by blood, marriage, or operation the law to these tenants. The resi- ent assistant is not considered to be rt of the household and is not sub- ct to the eligibility requirements of a nant. The resident assistant receives mpensation from sources other than mHA. A resident assistant is not a ore service worker as defined in Ex- ibit B of Subpart C of Part 1930 of is chapter.

Rural area. Open country or rural aces as defined in § 1944.10 of Sub- rt A of Part 1944 of this chapter.

Rural rental housing. Structures in a iral area which are or will be suitable r, and available to, eligible tenants a rental basis for dwelling use. The ructures may include related facili- es where appropriate.

Security value. The present market lue of the real estate offered as se- irity for the loan as determined by e loan approval official less the npaid principal balance plus past due terest on any other liens against it. ther liens will include any prior liens id junior liens to be or likely to be ken or subordinated at or immedi- ely after loan closing.

Service agreement. A written agree- ent between the borrower and the ongregate or group home service pro- der detailing the specific service to e provided, the cost of the service nd length of time the service will be rovided.

Service plan. A written plan describ- g how services will be provided to ongregate housing or group home rojects. At a minimum, the plan must ecify the services to be provided, the equency of the services, who will rovide the services, how tenants will e advised of the availability of serv- es, and the staff needed to provide e services.

State Agency. This is the Housing Fi- ance Agency within a State that has een given the responsibility to allo- ate low-income tax credits.

Very low-income household. A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14336, Apr. 11, 1989; 55 FR 6245, Feb. 22, 1990; 55 FR 26643, June 29, 1990; 55 FR 29560, July 20, 1990]

§§ 1944.206—1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be a citizen of the United States or a legally admitted alien for permanent residence in the United States; an organization as defined in § 1944.205 of this subpart; or an American Indian tribe, band, group, or nation (including Alaskan Indians, Aleuts, Eskimos, and any Alaskan native village), which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

(2) With the exception of a State or local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow the applicant to rent the units for amounts that are within the payment ability of eligible tenants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For nonprofit organizations, the assets of the individual members will not be considered.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) With the exception of a nonprofit organization, consumer cooperative or public body, have or be able to obtain the 3 percent borrower contribution required by § 1944.213(a)(2) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

(5) Own the housing and related land or become the owner when the loan is closed. In addition to the owner of full marketable title, an owner may be a lessee of a tract of land owned by a nonpublic body, State, political subdivision, public body, or public agency, or American Indian tribal lands which are not available for purchase. The State Director must determine that leaseholds are fully marketable in the area. The following conditions must be met when considering leasehold interests:

(i) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(ii) The amount of the RRH loan against the property will not exceed the estimated market value determined in accordance with Subpart B of Part 1922 of this chapter (available in any FmHA office).

(iii) The unexpired term of the lease on the date of loan approval must be at least 25 percent longer than the repayment period of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(iv) The borrower's interest must not be subject to summary foreclosure or cancellation.

(v) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA to occupy or sublet the property and sell the leasehold for cash or credit if the leasehold is acquired through foreclosure (or voluntary conveyance in lieu of foreclosure), or if the borrower abandons the property.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vi) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, he/she should request National Office evaluation and instruction.

(6) Have or be able to obtain the initial operating capital and other assets needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) If initial operating expenses are expected to be greater than 2 percent of the development cost, the initial operating capital will be increased accordingly.

(ii) Initial operating capital can be provided both in cash and in the form of an irrevocable letter of credit or a combination of both. If all operating capital is to be provided by a letter of credit, the applicant must indicate how start-up costs will be paid. It is expected, however, that most applicants will select a combination of cash and a letter of credit.

(A) Funds provided in cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution prior to the start of construction or loan closing (whichever is first) and will be used for authorized purposes only.

(B) If provided as an irrevocable letter of credit it must:

(*1*) Be unconditional;

(*2*) Be from a Federally Insured Financial Entity and show the Issuing Bank's name, document control number, issuance and expiration date;

(*3*) Be addressed to the project owner/entity and specifically refer to the proposed project;

(*4*) Be for a term of at least one year, contain an automatic renewal clause, and require a minimum of 30 days notice of expiration if the issuing bank elects not to renew the Letter of Credit;

(*5*) Be free of any deposit and/or reserve restrictions and may not be secured by the FmHA financed project;

(*6*) Be provided prior to the start of construction or when interim financing of funds are obtained or loan closing (whichever occurs first);

(*7*) Contain the statement "This Letter of Credit is issued to *Name of* *ntity* in the interest of the *Name of roject, Location—Street, City, State,* or satisfaction of Initial Operating apital required in a loan agreement ith the Farmers Home Administra- on."

(C) If provided as a combination:

(*1*) The cash and letter of credit, dded together, must equal the re- uired initial operating capital;

(*2*) They must be provided prior to e start of construction or loan clos- g (whichever is first);

(*3*) The cash portion will be handled ccording to paragraph (a)(6)(ii)(A) of is section and the letter of credit ust meet all requirements of para- raph (a)(6)(ii)(B) of this section.

(iii) When the applicant is to provide ther movable equipment and furnish- gs, the initial capital will be in- reased sufficiently to cover the cost f these items.

(iv) If the borrower provided the ini- al 2-percent operating capital from s own funds, the State Director may uthorize the borrower to make a one- me withdrawal from project funds fter two, but before five 5 full bor- ower fiscal years of operation, in ac- ordance with Subpart C of Part 1930 f this chapter.

(7) Possess the ability, experience, nd the legal and financial capacity to ncur and carry out the obligations re- uired for the loan.

(8) Agree to comply with all FmHA equirements, such as those set forth the loan resolution, loan agreement, e form of note, the mortgage and mHA regulations.

(9) Provide necessary management assure the successful operation of e project. Management services may e provided by the applicant, a man- gement firm or an agent. Manage- ent will be handled in accordance ith Exibit B to Subpart C of Part 930 of this chapter.

(10) In the case of a private nonprof- organization:

(i) If operating in one community nd its trade area, meet the following dditional requirements:

(A) The organization must maintain broadly-based membership reflecting variety of interests in the communi- y. The organization should have at east 25 members. The number of members may be decreased for projects with less than 25 units.

(B) Each member must be limited to one vote in the affairs of the organization.

(C) A majority of the members must reside in the community or the trade area where the housing will be located.

(D) At least five of the members must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(E) There must be at least five people on the board of directors and they must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(F) The directors must be members of the organization.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in Exhibits C and D, modified as appropriate in accordance with State law. The State Director, with the assistance of OGC, may develop a model set of articles of incorporation and bylaws for the State which are consistent with Exhibits C and D and publish an appropriate State supplement.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) except for (a)(9)(i)(C) of this section:

(A) The membership base should be representative of the area being served with at least five members representing a variety of interests from each community where the housing will be located.

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(9)(ii)(A) of this section.

(11) In the case of a limited partnership:

(i) The general partners must be able to meet the financial requirements of § 1944.211(a)(4) of this subpart if the partnership is not able to when the preapplication is filed.

(ii) The general partners must maintain a minimum 5 percent financial interest in the partnership. For this purpose, the minimum 5 percent requirement will be deemed to have been met if the general partner has a minimum 5 percent interest in the residuals or refinancing proceeds. The general partner will not be required to have a minimum 5 percent interest in current profits, losses, and cash distributions of the partnership. For example, an agreement where the general partners have such a 5 percent interest in a limited partnership and receive only 1 percent of the profits while the limited partners receive 99 percent of the profits would be allowable.

(iii) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of FmHA.

(12) Be willing to honor the long-term commitment associated with receipt of a Section 515 loan. Borrowers or principals of borrower organizations who sell or transfer loans less than 5 years old will not be considered eligible for further participation in the program as borrowers or principals (i.e., a general partner in a limited partnership) for at least 5 years from the date of the loan or assumption closing. The State Director may make an exception to this provision only if the transfer or sale meets the hardship provisions of § 1965.65(a)(4) of Subpart B of Part 1965 and the applicant meets all other eligibility requirements.

(b) *Authorized representative of an applicant.* FmHA will deal only with the applicant or its authorized representative and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment or the purchase of the land for the housing site.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14336, Apr. 11, 1989]

§ 1944.212 Loan purposes.

RRH Loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing buildings only when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.

(1) All rehabilitation work to be performed must be classified as either moderate or substantial rehabilitation as defined in Exhibit K of Subpart A to Part 1924 of this chapter.

(2) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the residents of the structure after rehabilitation.

(3) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Meet the applicable development standards as provided for in § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter and any applicable historic preservation requirements.

(ii) Create a suitable and appealing living environment and be substantially equivalent to new construction in quality and livability.

(4) The applicant must submit complete plans and specifications for rehabilitation for FmHA's review and acceptance.

(5) The rehabilitated project must generally meet the provisions of § 1944.215(b) of this subpart.

(6) When the downtown location of a rehabilitation project dictates such a portion of the structure (such as part of the ground floor and basement) can be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with the commercial space. In order to determine the correct RRH loan amount for the residential portion of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) The costs that can be easily and
ppropriately identified as being part
f either the commercial or residential
ortion of the structure should be sep-
rated.

(iii) The costs which cannot be easily
nd appropriately isolated (such as
ne cost associated with repair or ren-
vation of a boiler, the value of the
ructure "as is," and certain mechani-
al or electrical components that will
enefit both commercial and residen-
al tenants will be prorated between
ne two uses based on the percentage
f equipment load (example—central
oiler or air conditioning) which
ould be necessary for each portion of
ne structure.

(iv) For the purposes of the loan lim-
ations in § 1944.213(b) (1) and (2) of
is subpart, the term "development
st" means the development costs as-
ciated with or prorated to the resi-
ential use of the structure, and the
rm "security value" is the security
lue of the project exclusive of the
lue contributed to the land and
ructure(s) by the commercial space.
ne capitalization approach to value is
e means by which FmHA may estab-
h the value contributed by the com-
ercial space.

(v) The applicant must rely on other
urces of financing for all costs asso-
ated with or prorated to the commer-
al space, given the FmHA security
quirements of § 1944.221 of this sub-
rt.

(7) The applicant may not lease any
thorized commercial space without
e prior written consent of the State
rector. Prior to loan closing, the
vice of OGC will be obtained as to
y modifications needed in the mort-
ge, loan agreement or loan resolu-
n to enforce this requirement. The
ate Director may not consent to any
se unless:

i) The lease contains a provision by
ich the lessee agrees to vacate the
emises if FmHA withdraws its con-
nt to the lease.

ii) The proposed use of the leased
ace has a mutually supportive rela-
nship to the needs of the residential
nants and to the use of the residen-
l portion of the structure.

iii) The terms of the lease and the
oposed use of the leased space do not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with Subpart B of Part 1922 of this chapter (available in any FmHA office). Purchase price in excess of estimated market value will not be used in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant/organization or from another organization in which any member of the applicant/organization has an interest except that, with prior approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, only when:

(i) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land; and

(ii) The cost of the excess land is a reasonable portion of the loan.

(d) Develop and install streets, a water supply, and sewage disposal, heating, cooling, and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legal right to use the facility for a period of at least 25 percent longer than the life of the loan and the title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center when the project is large enough to justify the facility. In all projects, passive recreation (such as outdoor seating) for elderly projects and active facilities (such as tot lots) for family projects will be provided.

(3) Central cooking and dining in congregate and group living housing when the project is large enough to justify them to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables, should be attached to the land or buildings in a manner regarded in law as part of the real estate.

(4) Space for a small infirmary for emergency care only when justified by the size of the project. An infirmary will not be justified if facilities for emergency care expected to be needed by the tenants are readily accessible elsewhere.

(f) Construct office and living quarters for the resident manager and other operating personnel if the facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(g) Purchase and install ranges, refrigerators, drapes, drapery rods and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual rental units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(h) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas and driveways.

(i) Pay related costs such as fees and charges for market studies, tax credit fees, and legal, archeological, architectural, engineering, environmental and other appropriate technical and professional services. The fees and charges may be paid to an applicant or officer, director, trustee, stockholder, member or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(j) Provide loan funds to enable a nonprofit group or public body to pay fees, for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist it in the formation or incorporation and development and packaging of its loan docket and project, as well as any legal, technical, and professional fees incurred in the formation or incorporation of the applicant entity.

(1) Fees can also be provided to pay the nonprofit applicant entity for packaging of its loan docket and project, but not to include the formation and incorporation of the entity.

(2) The amount to be paid for packaging of the loan docket and project should not exceed 1% of the FmHA loan or whatever is reasonable and typical for the area.

(3) Related project costs as listed in § 1944.222 of this subpart are not included as a part of the fee for packaging of the loan docket and project.

(k) Pay construction interest as follows:

(1) In the case of multiple advances, loan funds will not be used to pay construction interest. Accrued interest during construction will be capitalized when construction is substantially complete, loan funds are fully advanced and the project is ready for full operation or when advances plus accrued interest reach the maximum debt limit (MDL). When requested by the borrower, each month the District Director will provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) In the case of interim financed construction, interest accrued and customary charges necessary to obtain interim financing may be included in the loan amount.

(l) Purchase housing from an interim lender that holds fee simple title to an RRH project upon which construction commenced pursuant to § 1944.235(c)(1) and after issuance of a letter of commitment to the interim lender in accordance with Exhibit B of this subpart, when all of the following conditions exist.

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown in Exhibit B to this subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit B to this subpart for the construction of the project.

(3) The project is substantially complete (see § 1944.235(c)(1)(vi) of this subpart), all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications and contract documents, and is in compliance with Subparts A and C of Part 1924 of this chapter.

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(m) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.215(t) of this subpart.

(n) Construct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural rental housing. Only the Administrator may authorize loan funds to be used for this purpose.

(o) Finance the conversion of Section 502 units in inventory to a Section 515 project in accordance with the requirements of this subpart and Subpart C to Part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to Section 515 housing.

[53 FR 2159, Jan. 26, 1988, as amended at 54 FR 14336, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29560, July 20, 1990]

§ 1944.213 Limitations.

(a) *Loan Limits.* The Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235 requires that the Secretary certify that assistance provided any housing project is not more than is necessary to make the project affordable. Pursuant to this Act the applicant must disclose, with the preapplication package, other Government assistance as defined in § 1944.205 of this subpart proposed for the project. The aggregate amount of assistance will be taken into account when determining the FmHA loan amount to be granted. Exhibits A-6 and A-9 provide for required documentation regarding assistance being sought for the proposed project. Additionally, SF 424.2 requires that the applicant/entity disclose all assistance being sought.

(b) *State Director's loan limitation.* The amount of the RRH loan(s) on each project is limited to the maximum amount of the State Director's loan approving authority unless the National Office provides prior written authorization. To request National Office authorization, the State Director must submit the preapplication, detailed information on the need and market for the project, and his/her recommendations. This must be done before Form AD-622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan has been determined eligible. Additional loans to the same applicant entity may be made on the same or contiguous site without regard to this limitation if the previous project is completed and is being successfully operated. A clear market demand must be evidenced for any addtional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For nonprofit corporations, consumer cooperatives, and State or local public agencies, the amount of the RRH loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(t) of this subpart.

(2) For all other applicants, the amount of the RRH loan(s) will be limited to no more than 97 percent of the development cost or 97 percent of the security value of each project, whichever is less.

(3) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (b) (1) and (2) of this section. However, Predetermined Amortization Schedule System (PASS) loans closed with multiple advances may exceed that amount when an additional amount is permitted to allow interest to be capitalized to the first of the following month.

(4) All borrowers must agree in writing to provide funds from their own resources to pay any cost for completing planned construction after the MDL is reached.

(c) *Limitations on use of loan funds.* Loans will not be made for:

(1) Specialized equipment for training and therapy.

(2) Commercial facilities except essential service-type facilities for tenants when such facilities are not conveniently available.

(3) Housing to serve primarily temporary and transient residents.

(4) Nursing homes, special care facilities, or institutional-type homes.

(5) Nonessential facilities such as fireplaces, saunas, whirlpools, gyms, and swimming pools.

(6) Refinancing debts of the applicant except:

(i) As authorized in §§ 1944.235(c) and 1944.213(d)(1) of this subpart; or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes will be limited to the amount necessary to obtain the release but will not exceed this "as is" value of the land as determined in accordance with FmHA Instruction 1922-B (available in any FmHA office).

(7) Payment of any fee, charge or commission to any broker, negotiator or other person for the referral of a prospective applicant or solicitation of a loan.

(8) Payment of any fee, salary, commission, profit, or compensation to an applicant or to any officer, director, trustee, stockholder, member, or agent of an applicant except as provided in § 1944.212(j) of this subpart.

(9) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, except as authorized in § 1944.212(c)(2).

(10) Compensation to an applicant for value of land contributed in excess of the initial 3 percent contribution.

(11) Payment of fees charged by a commercial banking institution for granting a letter of credit.

(d) *Obligations incurred before loan closing.* When an applicant files a preapplication for a loan, the District Director will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then apply. During the period of preapplication review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist:

(1) The debts were incurred:

(i) After the applicant filed a written preapplication for a loan with FmHA;

(ii) Prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and the State Director secures prior concurrence from the National Office; or

(iii) Prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and the State Director secures prior concurrence from the National Office.

(2) The applicant is unable to pay the debts from its own resources or to obtain credit from other sources and failure to authorize the use of loan funds to pay the debts would impair the applicant's financial position.

(3) The debts were incurred for eligible loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA standards and requirements.

(5) Payment of the debts will remove any liens which have attached and any basis for liens that may attach to the property on account of such debts.

(e) *Limitations on cost increases.* After loan approval of a project involving new construction or major rehabilitation:

(1) No increase in per unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control, such as:

(i) Design changes required by FmHA or State or local government having jurisdiction over the development of the project; or

(ii) Changes in financing approved by FmHA.

(2) Any cost increase which cannot be approved for funding by FmHA must be satisfied by the owner from its own resources. Whenever there is doubt as to the resulting effect of a cost increase upon per unit development cost, the cost increase request may be conditionally approved provided:

(i) The owner agrees in writing to provide any funds necessary in excess of its initial contribution and the loan amount to complete the project; and

(ii) The owner furnishes surety that guarantees payment under the assurance agreement in the form of a surety bond, unconditional and irrevocable letter of credit or cash which is put into an interest or noninterest bearing supervised bank account. Such funds will not result in a lien on the project or its operating income.

(3) Under no circumstances will a cost increase request be approved without concurrent agreement between FmHA and the applicant/borrower as to how the cost increase will be funded.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29558 and 29561, July 20, 1990]

§ 1944.214 Rates and terms.

(a) *Interest.* Upon request of the borrower, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice at the time of loan approval, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(b) *Amortization period.* Each loan will be scheduled for payment within a period that is necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note, except as provided in § 1944.223 for manufactured housing.

§ 1944.215 Special conditions.

(a) *Cost containment.* To help assure low affordable rental rates, RRH projects must be economical in construction and not of elaborate design or materials. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants.

Cost containment challenges us to consider the cost/benefit ratio when evaluating, recommending or requiring specific design features or construction techniques. The following guidelines should be followed when developing RRH projects:

(1) Each State architect/engineer should compile and maintain data or spreadsheets on cost/sq. ft., cost/unit, and cost/acre, A/E fees, etc., which are reasonable and customary for the State. Any proposal that exceeds those costs should be carefully evaluated for possible cost reductions. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents should be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications should be accepted only if fully justified and no reasonab ternatives are available.

(4) Designs which encourage st ard building material dimensions reduce waste will be used as muc possible.

(5) State Directors should encou the use of sites that require a m mum amount of site developm State Directors should also encou projects with a minimum of 14 u per acre unless the applicant prov documentation supporting a char such as local zoning requirements quiring a different density.

(6) Items such as covered park and garages can be included in FmHA loan only when they are quired by local codes or ordinances.

(7) Sound judgment and comm sense must also be used in constr tion inspections and final acceptan of projects. Field staff involved these activities must be careful not impose additional or unreasonable quirements on the builder that will crease construction costs.

(8) When evaluating RRH project life cycle costs will be considere These costs include: Initial cost future replacement costs and ope ation and maintenance costs. The ec nomic lives of alternative design an materials will be considered. Reduc tions in initial costs may result i higher life cycle costs.

(9) Management, maintenance an community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation and areas for sorting and folding clothes.

(b) *Type of housing.* All housing should be designed to:

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter. As a general rule, the gross square foot living area of new rental units and related facilities to be constructed with RRH loan funds will be within the ranges listed below. Living area does not include outdoor storage space

when unfinished or space for heating and cooling equipment.

Type of unit	Minimum/maximum living area
0-Bedroom Unit	350-500 sq. ft
1-Bedroom Unit	500-650 sq. ft.
2-Bedroom Unit	650-800 sq. ft.
3-Bedroom Unit	800-950 sq. ft.
4-Bedroom Unit	950-1100 sq. ft.

(i) An additional 100 to 120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living area is on two floor levels of the rental unit, the maximum gross square footage of living area may be exceeded by up to 70 square feet, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the applicable development standard. Minimum room sizes may be determined by the minimum areas in Guide 2 of Subpart A of Part 1924 of this chapter.

(iv) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) Consist of mulit-unit type housing with two or more units and appropriate related facilities except for the conversion of section 502 inventory housing as covered in § 1944.212(o) of this subpart, manufactured homes and group homes.

(3) Be residential in character and be designed to meet the needs of eligible tenants. Generally, RRH structures should not be more than three stories high. However, low-rise structures with elevators can be considered when the following conditions exist:

(i) There is a serious shortage of suitable building sites, the number of units needed cannot be built due to lack of space on available suitable sites and other building sites are not available.

(ii) Land costs are such that one- to three-story construction would result in a unit cost and rental rates in excess of what eligible tenants can afford.

(iii) The number of stories proposed for the structure is compatible with other rental structures in the community.

If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures.

(iv) The cost of the units should compare favorably with one- to three-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State architect or engineer has reviewed the plans, specifications and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the applicable development standards. If elevators are included, the subsoil conditions of the site must be adequate for the installation of elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Provide kitchen and bath facilities consistent with the size of the unit. For example, units with three or less bedrooms typically can be designed with one bath. However, townhouse units with three or more bedrooms where living area is on two floors may contain bath facilities on both levels. Kitchen facilities are required in all units; however, in congregate housing, some or all of the units may have limited facilities, such as a cooktop with a small oven and refrigerator.

(5) Give maximum consideration to energy conservation. To keep operating costs at a minimum, units should be individually metered for utilities unless adequate justification is provided to show that it would be infeasible.

(6) Meet the needs of handicapped tenants. At least 5 percent of the units in the project or one unit, whichever is greater, must be accessible to or adaptable for physically handicapped persons. The percentage of the units provided may be modified if an applicant shows, through information obtained from a State, local or independent

agency or organization serving handicapped people, that a different percentage of accessible or adaptable units is appropriate. However, at least one accessible unit will be provided. Adaptable units must be constructed in accordance with the uniform Federal Accessibility Standards, Sections 4.34.3 through 4.34.6.

(7) For covered dwellings handicap accessibility requirements will be met as set forth in section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988.

(c) *Deferred principal payments.* (1) When construction is funded by multiple advances from FmHA, principal payments on the loan will be deferred for the period of construction.

(2) When an interim financed loan is closed other than the first day of the month, principal payments will be deferred for the remaining period of the month in which the loan is closed.

(3) When construction is substantially complete and the project is ready for full operation, or the total of principal advances plus accrued interest reaches the MDL, interest on the advances will be accrued to the Amortization Effective Date (AED) and will be capitalized, establishing a new principal (loan) amount.

(4) At loan obligation, the MDL will be established according to § 1944.213(a) of this subpart. When the final advance on the loan is issued or the MDL is reached, the Finance Officer will:

(i) Accrue interest on all advances through the last day of the month and capitalize the interest as of the AED. When there is a remaining obligation balance, it will be canceled by the Finance Office.

(ii) Establish the new loan amount and the borrower's monthly payments computed over the remaining term of the loan.

(5) The District Office will:

(i) Contact the applicant and complete Form FmHA 1944-52, "Multiple Family Housing Promissory Note."

(ii) Implement Form FmHA 1944-7, "Interest Credit and Rental Assistance Agreement," at AED or when the project is substantially complete and ready for full operation, whichever is later.

(d) *Refinancing RRH*
borrower, except those
whose loans were made
contracts entered into on
cember 15, 1989, must a
nance the unpaid balance
loan when requested by
The rates and terms of th
loan must be considered re
the Agency, and still perm
to be rented to eligible
rental rates within their p
ity. The refinancing of a
comply with the restrictio
in § 1944.236 (b)(5) of this
subpart F of part 1951 of t

(e) *Loan resolution or*
ment. The loan resoluti
agreement contains pro
policy and procedure whic
carefully read and fully un
the applicant. If any pro
not appropriate to a part
proposed substitute langua
approved by FmHA and O
C of Part 1930 provides fo
tenance of certain accoun
pledge of housing income
It contains regulatory pro
erning and giving FmHA
impose requirements reg
housing and related operat
applicant. All sections a
ments determined applicab
will form part of any othe
lution or agreement that m
mitted by the applicant. Th

(1) Form FmHA 1944-
Agreement for an RRH Lo
dividual Operating on a Pr
RRH Loan to an Individual
on a Limited Profit Basis."

(2) Form FmHA 1944-
Agreement for an RRH
Partnership Operating on
Basis or RRH Loan to a Li
nership Operating on a Pro
RRH Loan to a Partnership
on a Limited Profit Basi
Loan to a Limited Partnersh
ing on a Limited Profit Basi

(3) Form FmHA 1944-35, "
olution for an RRH Loan to
Based Nonprofit Corporatio
Loan to a Profit Type Corp
RRH Loan to a Profit Typ
tion Operating on a Limi
Basis."

(f) *Interest credits and rental assistance (RA).* (1) Borrowers may receive interest credits if they meet the requirements outlined in Exhibit B of Subpart C to Part 1930 of this chapter.

(2) RA may be provided to eligible tenants in eligible projects in accordance with Exhibit E to Subpart C of Part 1930 of this chapter.

(3) At least 95 percent of RA units available for newly constructed projects must be used to assist very low-income tenants. Up to 5 percent can be used for low-income tenants.

(g) Nondiscrimination in use and occupancy. The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of housing or related facilities because of race, color, religion, age, sex, marital or familial status, handicap or National origin in accordance with Title VIII of the Civil Rights Act of 1968, as amended.

(h) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible tenants as defined in § 1944.205 of this subpart. Eligible tenants must meet the requirements of Exhibit B of Subpart C of Part 1930 of this chapter.

(i) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 1944-8, "Tenant Certification," in accordance with Exhibit B to Subpart C of Part 1930 of this chapter.

(j) *Supervision of borrowers.* Supervision will be provided borrowers under Subpart C of Part 1930 and Subpart B of Part 1965 of this chapter.

(k) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 3 percent in § 1944.213(b)(2) of this subpart and may include the following:

(1) Cash contributions made by the applicant which, when added to the FmHA loan amount, are not in excess of the security value of the project.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the FmHA loan amount, is not in excess of the security value of the project. An appraisal will be done by an FmHA employee authorized to make appraisals or an FmHA authorized representative in accordance with applicable FmHA regulations. Value of the applicant's contribution will be determined on an "as is" basis less any amount owed on the property.

(l) *Intergovernmental review.* FmHA will consider comments received in accordance with 7 CFR Part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities," when making decisions on loan applications. (See FmHA Instruction 1940-J, available in any FmHA office.)

(m) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects will comply with Subpart G of Part 1940 of this chapter.

(n) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988, are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will apply.

(o) *Location of housing.* (1) The location of the project should expand the supply of decent, safe, and sanitary housing for very low-, low- and moderate-income elderly persons and families in a nondiscriminatory way. The location should promote a greater choice of housing opportunities in the housing market area.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status or physical or mental handi-

cap thereby opening up nonsegregated housing opportunities for minorities.

(3) Except as otherwise permitted by paragraph (p)(6) of this section, housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical, and pharmaceutical) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project. (See FmHA Instruction 1922-B, § 1922.55.)

(4) In order to provide housing at the lowest cost possible, preference will be given to loan requests in which specific tracts of land will be donated by States, units of local government, public bodies and nonprofit organizations. The land must be suitable for the proposed housing and meet all FmHA site criteria. In addition, affording such preference must be cost effective.

(5) Noncontiguous sites. (i) Noncontiguous sites within the same community may be considered if feasible. Each site must meet all FmHA site criteria and an appraisal must be made on each site in accordance with § 1922.55(a)(7) of Subpart B to Part 1922 of this chapter (available in any FmHA office). The units must be managed under one management plan with one loan agreement/resolution.

(ii) If a small community cannot support a project containing enough units to make it cost effective or in cases involving conversion of 502 inventory units, FmHA will consider a project which includes more than one site in the same or different communities. The State Office and applicant must mutually agree that the location of the sites will not adversely effect the efficiency of management and servicing of the projects. The requirements of paragraph (p)(5)(i) of this section will also apply.

(6) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures (in accordance with § 1944.212(b) of this subpart) located in the downtown business areas of rural communities that have established a comprehe strategy for meeting their comm development and housing needs. strategy must include the redeve ment, rehabilitation, restoration o vitalization of the downtown busi area. The proposed project site n be located within the downtown b ness redevelopment/revitalization a and the following conditions must met:

(i) Essential public facilities (such schools, hospitals and generally c tral water and sewer systems) a services (such as shopping, medic and pharmaceutical) must be readi available in close and convenient prox imity to the site and must be adequat to support the needs of the tenant and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs. The plan will include the need for eliminating and preventing economic decay, slums or blight; the need of benefiting the lower-income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) *Neighborhood revitalization:* The strategy for alleviating physical deterioration, maintaining viable neighborhoods and stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) *Housing:* The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved housing assistance plan would be helpful as part of this component strategy.

(C) *Economic development:* The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (p)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed RRH project.

(v) Prior review and concurrence must be received from the National Office before the State Director or District Director authorizes the applicant to develop a complete application. All of the information required in paragraph (p)(6) of this section must be provided by the applicant before National Office review.

(7) The property for which a loan is made must be located in a rural area as defined in § 1944.10 of Subpart A of Part 1944 of this chapter. However, if the area where the site is located has changed from rural to nonrural in accordance with the most current official census figures, preapplications received before the date the area was determined nonrural will be processed as expeditiously as possible and loans closed if the applicants are otherwise eligible.

(p) *Clean Air Act and Water Pollution Control Act Requirements.* When the contract exceeds $100,000, the contractor will comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15 which prohibit the awarding of nonexempt Federal contracts, grants or loans to facilities included on EPA's list of violating facilities. The contractor will report violations to the EPA.

(q) *Concurrence with construction contracts.* A construction contract between the borrower and contractor for development of an RRH project will contain a provision that it is not in full force and effect until the State Director concurs in writing in the form, content and execution of the contract. Before loan closing or before the start of construction, whichever occurs first, the State Director of his/her delegate will concur with the contract form, content and execution by including the following paragraph at the end of the contract:

> The Farmers Home Administration, as a potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby concurs with the form, content, and execution of this contract.
>
> Date ————
>
> Farmers Home Administration
>
> By: ————
>
> Title: ————

(r) *Historic preservation requirements.* The District Director must take the necessary action to assure that the applicant will comply with the provisions of Subpart F of Part 1901 of this chapter. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), and Executive Order 11593 dated May 13, 1971.

(s) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which an RRH project will be located. FmHA loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at Part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

(t) *Rental assistance (RA) and market feasibility.* (1) As evidence of market feasibility, an applicant that proposes a project which is expected to use FmHA RA units will only be required to demonstrate that a market exists for tenants eligible for the RA.

(2) To evidence market feasibility for projects which are expected to use RA from sources other than FmHA, applicants will be required to demonstrate that:

(i) The assistance will be provided for at least 5 years.

(ii) A market exists for persons and families eligible for the assistance. The amount of the RA to be provided must be considered when determining the number of families that would be income eligible for the project.

(iii) For the term of the loan remaining after RA is no longer available, an adequate rental market exists for the project without the assistance.

(iv) During the term of the RA contract, the provider will make available the amounts required at least annually.

(v) *Accountability.* Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7492, Mar. 9, 1988; 55 FR 6245, Feb. 22, 1990; 55 FR 25078, June 20, 1990; 55 FR 26644, June 29, 1990; 55 FR 29561, Jul 1990]

§§ 1944.216—1944.220 [Reserved]

§ 1944.221 Security.

(a) *Mortgage.* Each loan will be cured in a manner that adequat protects the financial interest of Government. A first mortgage, exc as indicated in paragraphs (a)(1) (3) of this section, will be taken on property purchased or improved w the loan.

(1) A second mortgage will be tak on a site developed with prior RR loan(s) when a subsequent loan made to complete or finish out uni on the site or when a second initi loan is made to develop units on a co tiguous site.

(2) Personal liability will not be quired for the members or stockhol ers of any corporation or trust or an partners in a limited partnership. Pe sonal liability will be required of a members of other partnerships. Fo limited partnerships, the State Direc tor will obtain the advice of the Re gional Attorney as to any modifica tions needed in the promissory note and mortgage.

(3) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(b) *Financing Statement.* To secure the FmHA loan, each borrower will execute Form FmHA 440-25, "Financing Statement," and a security agreement at loan closing pledging all revenue from the housing project. This includes any FmHA RA payments, State or private RA payments and/or tenant rent payments.

(c) If a bond is used in lieu of a promissory note to evidence a loan, it must be sent to the National Office for review prior to loan closing. OGC must also review the proposed bond.

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised without regard to such factors as race, color, religion, sex, handicap, marital or familial status, or National origin, and it is unlawful to use an appraisal where the person knows or reasonably should know the appraiser improperly took into consideration the factors indicated above. Appraisals for FmHA will be done by the multiple housing appraiser or a designated contract appraiser authorized to make real estate appraisals. If security involves less than four (4) rental units, the property will be appraised under Subpart C of Part 1922 of this chapter. Security involving four (4) or more rental units, the appraisal will be made under Subpart B Part of this chapter (available in any FmHA office). Form FmHA 1922-7, "Appraisal Report for Multi-Unit Housing," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Architectural and engineering services.* (1) Housing and related facilities will be planned and developed in accordance with Subparts A and C of Part 1924 of this chapter. The housing will be designed to meet the needs of the types of tenants who will likely occupy it.

(2) A written contract for architectural services will be required as outlined in Subpart A of Part 1924 of this chapter.

(c) *Construction and development policies.* Construction and development will be performed in accordance with Subpart A of Part 1924 of this chapter (FmHA Instruction 1924-A), available in any FmHA office.

(d) *Compliance with Federal, state and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy).

(e) *Contracts for legal services.* On projects requiring extensive legal services, the applicant must have a written contract if loan funds will be use for these services. All contracts will be subject to review and concurrence by FmHA and should be submitted to FmHA before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(f) *How to apply for a rural rental housing loan.* Exhibit A may be used as a guide for applicants applying for loans. Extra copies may be obtained from FmHA.

(g) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant must obtain an option on the parcel to be purchased. Form FmHA 440-34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440-34 is used, a provision should be included indicating that it is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440-35, "Acceptance of Option," or other appropriate form of acceptance completed, signed and mailed to the seller.

(h) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of Subpart A of Part 1944 and Part 1807 of this chapter (FmHA Instruction 427.1) regarding title clearance and legal services will apply.

(i) *Use of and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of Subpart A to Part 1902 and Subpart C to Part 1930. Collateral for deposit of funds will be pledged in accordance with § 1902.7 of Subpart A of Part 1902 of this chapter. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds cannot be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for eligible loan purposes.

(j) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1) and Subpart C of Part 1930 of this chapter.

(2) Suitable worker's compensation insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged or required, when appropriate, to obtain liability insurance.

(4) Flood insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart B of Part 1806 (FmHA Instruction 426.2).

(k) *Bonding.* (1) The provisions of Subpart A of Part 1924 of this chapter pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds is the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the officials, employees and/or management agents entrusted with the receipt, custody and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will likely have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named coobligee in the bond if not prohibited by State law. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(l) *Previous participation certification.* All principals and affiliates are required to submit a properly completed Form HUD-2530/FmHA 1944-37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The forms will be completed and processed in accordance with instructions attached to the form.

[53 FR 2159, Jan. 26, 1990, as amended at 55 **FR 6245, Feb. 22, 1990; 55 FR 26644**, June 29, 1990; 55 FR 35895, Sept. 4, 1990]

§ 1944.223 Supplemental requirements for manufactured home rental project development.

This section includes additional provisions that appiy to the making of loans for manufactured home rental project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible tenants will also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* When a loan is closed on a manufactured home rental project, the borrower will have constructed and completed, pursuant to a commitment given in accordance with § 1944.235(c)(1) of this subpart, or will be obligated to construct and complete, pursuant to § 1944.235(c)(2) of this subpart, such project designed principally for rental use for manufactured homes, and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(1) The borrower must be the first owner purchasing the manufactured homes for purposes other than resale.

(2) The project must include two or more continguous sites with dwelling units. Each manufactured home unit must not have been previously occupied as a residence or for any other

purpose and be less than 1 year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided in § 1944.212(l) of this subpart.

(4) A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, manufactured homes conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(b) *Loan limitations.* The maximum loan amount will be determined in accordance with § 1944.213 of this subpart as applicable.

(c) *Rates and terms.* The amortization period of each loan will not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance will the amortization period for a loan made under this section exceed 30 years from the date of the promissory note.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the project is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Property requirements.* (1) Construction and development of the project, including related facilities constructed or erected on the security property, will be in accordance with § 1944.222(d) of this subpart and Exhibit J to Subpart A of Part 1924 of this chapter.

(2) Manufactured home rental projects will be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony will be avoided. All property improvements will relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently, and conveniently arranged in relation to the topography and the shape of the property.

(3) The borrower will not use or permit the use of any portion of the security property for demonstrating mobile home models for sale promotion purposes.

(4) The manufactured home, when placed on site, will have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

(i) Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA adopted standards which are identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(ii) Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(iii) Be constructed in compliance with FmHA thermal performance construction standards as specified in Exhibit D to Subpart A of Part 1924 of this chapter. The unit must have an affixed label as specified in paragraph XIV(c)(3) of Exhibit F to Subpart A of Part 1944 of this chapter indicating that the unit is constructed to FmHA thermal requirements for the appropriate winter degree days.

(iv) Be constructed in compliance with applicable standards and manuals adopted by FmHA as evidenced in Part A, paragraph V of Exhibit J to Subpart A of Part 1924 of this chapter. All units must conform to the HUD "Federal Manufactured Home Construction and Safety Standards," and be identified by an affixed certification label according to Exhibit J to

Subpart A of Part 1924 of this chapter.

(f) *Special warranty requirements.* The general contractor or dealercontractor, as applicable, must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924 of this chapter.

(1) The warranty will provide that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications.

(2) The warranty will also include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer-contractor must warrant that the manufacturer's warranty is in addition to and not in derogation of all other warranties, rights and remedies that the borrower may have.

(4) The seller of the manufactured homes will deliver to the borrower the manufacturer's warranty. The warranty will identify the units by serial number.

[53 FR 2159, Jan. 26, 1988, as amended at 55 FR 29561, July 20, 1990]

§ 1944.224 Supplemental requirements for congregate housing and group homes.

This section includes additional provisions that apply to the making of loans for congregate housing and group homes. It will apply in addition to all other applicable requirements contained elsewhere in this subpart. Congregate housing and group homes are types of section 515 RRH that require a broader commitment from applicants to ensure that needed and desired services will be provided to prospective tenants. The concept may not be desired or feasible in all market areas. Congregate housing is unique and has many components. It is not merely an elderly housing project with services. It must be designed and managed to meet the needs of aging tenants. The management of congregate housing requires supervision of support services and more interaction and oversight of tenants. We strongly
ommend that applicants who have
dealt with this type of housing ob
assistance from organizations or
viduals who have experience in p
ning and designing congregate h
ing.

(a) *Congregate housing.* Congreg
housing will create an environm
that will enable fully independent
dividuals to maintain their indepe
ence longer by making available nu
tious meals and other services that
enhance their independence. Cong
gate housing will also help people w
need some services to extend an in
pendent lifestyle.

(1) *Eligible tenants.* Eligible tenan
are described in § 1944.205 of this su
part and paragraph V A of exhibit J
subpart C of part 1930 of this chapte
Tenants who need the services
remain independent may meet th
tenant eligibility requirements co
tained in paragraph VI B 1 i of exhibi
B of subpart C of part 1930 of thi
chapter by taking the services provid
ed by the project. Fully independent
tenants who do not want to participate
in the services may be more suitable
for noncongregate elderly projects.

(2) *Design criteria.* Applicants must
pay particular attention to the layout
of the structure and the effect of
design elements on project manage-
ment and ongoing operations. Appli-
cants should engage the services of an
architect experienced in congregate
design. The initial planning of congre-
gate housing should include input on
design considerations from project
management to prevent the potential
long-term affects of poorly conceived
design on operations. Congregate
housing must be planned and devel-
oped in accordance with subparts A
and C of part 1924 of this chapter. In
addition, it must meet the following
design criteria:

(i) Applicants must pay particular
attention to the site requirements con-
tained in § 1944.215(o) of this subpart.
Congregate housing should be located
as close to services and shopping as
possible, considering the availability of
affordable residential sites. The time
it takes to reach services is also impor-
tant especially when considering po-
tential medical emergencies.

(ii) Facilities needed to accommodate the services described in § 1944.224 (a)(5) of this subpart must be designed in accordance with acceptable practices. Specific design guidelines are provided in chapter 1 of Guide 2 of subpart A of part 1924 of this chapter. These facilities may be larger than necessary to meet the tenants' requirements if they are needed in the community and other sources of funds are available to pay a pro rata share of the cost.

(iii) The decreasing physical and mental capabilities of the tenants must be considered in the design. The walkways and corridors between living units and the support service facilities must be safe, comfortable and minimal in length. Handrails that comply with the Uniform Federal Accessibility Standards must be provided on at least one side of all public corridors.

(iv) Areas used by the tenants will be separated as much as possible from areas needed for delivery of food and supplies and other building services. Interior spaces and finish materials must be residential in character and designed to help prevent tenants from becoming disoriented within the building(s).

(v) Emergency lighting must be provided in every public space, corridor, stairway, elevator and other means of egress.

(vi) The entrances to all living units must be on a route accessible to the physically handicapped. Living units accessible only via exterior steps or interior stairs will not be acceptable.

(vii) The size of rooms and spaces in the living units must be comparable to units provided in other housing for the elderly. Kitchen facilities must be provided in all living units and include, as a minimum, a cooktop, oven, sink, refrigerator and a food preparation surface.

(viii) The bathroom and one bedroom in each living unit, and any public toilet rooms, must be furnished with an emergency call system that is appropriate for the size and management of the housing facility.

(3) *Limitation on use of loan funds.* Loan funds cannot be used for:

(i) Items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, etc. Congregate housing projects require additional items that will not become affixed to the real estate. Developers are responsible for ensuring that these items are made available to the project. The initial operating capital can be used for these items in accordance with § 1944.211(a)(6)(ii) of this subpart.

(ii) Specialized equipment for training and therapy.

(iii) Operating capital for a central dining facility.

(4) *Management of congregate projects.* Applicants must meet the provisions of exhibit J of subpart C of part 1930 of this chapter in managing congregate housing. In addition to the elements of managing a typical rural rental housing project, congregate housing requires increased management experience and skills. Delivery of services, oversight of tenants and the decisionmaking process of tenant selection add a unique dimension to prudent management. The success or failure of a project will rely heavily upon management effectiveness and delivery of services. Applicants who are not experienced with congregate housing must seek assistance from organizations or individuals experienced with congregate issues in developing the management and servicing plans. A separate plan detailing the delivery of services must be submitted with the preapplication. If the applicant will be the service provider, it must also submit separate budgets for operation and maintenance of the project and services.

(5) *Support services.* Exhibit E of this subpart must be addressed in planning services. Adequate services must be offered to extend the independence of tenants and be reasonably priced to ensure affordability by very low- and low-income tenants. A wide variety of services may be offered; however, the following services must be provided:

(i) *Meals.* Since some tenants will depend on the meal service as their only sustenance, at least one cooked meal a day, 7 days a week, must be provided. There may be cases where the meal provider does not furnish meals on a daily basis. On days the meal provider does not furnish meals, an alternate source must provide meals to tenants who are not inclined to prepare their own meals. The following conditions apply to meals:

(A) To ensure that the meals are wholesome and meet the needs of individual tenants, a professionally trained dietitian or nutritionist must be involved in planning the menus.

(B) The feasibility of sustained meal service may be dependent on the number of people who elect to use it. Congregate housing borrowers should actively solicit tenant participation in the meal service if the economic feasibility of the service depends on user charges.

(C) If the entity that operates the service is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA), the entity must be authorized by FNS to accept food stamps from tenants for the purchase of meals.

(ii) *Transportation*. Transportation must be provided to the project on a fixed schedule based on tenant needs. Applicants are encouraged to work with public and private transportation sources to develop a dependable and economical method for providing this service. If these sources cannot provide adequate transportation, the applicant must develop a project-sponsored transportation system.

(iii) *Housekeeping*. Housekeeping services must be provided to tenants who require assistance in keeping their units clean. Light housekeeping tasks, such as dusting, vacuuming, floor washing, bathroom cleaning and laundry for bedding, generally should be provided on a weekly basis. Heavier tasks, such as oven cleaning, window cleaning and drapery cleaning, should be provided periodically.

(iv) *Personal services*. Limited nonmedical personal services must be made available to tenants who need them to remain independent. Personal services can include such items as assistance with personal hygiene, nutrition counseling and general health screening. They do not include recurring medical assistance such as dispensing medication or constant medical supervision. Space may be included in the project for a small beauty shop and health screening area. Applicants may want to consider contracting for personal services to assure their continued and dependable availability to tenants.

(v) *Recreation/social*. Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. Areas such as hobby and craft classes, special dinners and wellness exercise classes could be considered.

(6) *Service providers*. Service must be provided at a cost that can be afforded by very low-, low- and moderate-income tenants. Applicants should explore as many service providers as possible to ensure services at the most reasonable cost. Applicants must research alternative service providers since the original provider may be unable to furnish service in the future. If feasible, project management should be consulted concerning alternative service providers since they may have experience with available sources in the area. Documentation concerning alternative services must be submitted as part of the preapplication. Alternative sources must be documented even if the applicant plans to use onsite personnel for services. The availability of services from alternative sources can enhance a proposal's feasibility since long-term services are crucial to the success of congregate housing.

(7) *General service requirements*. Applicants must provide a plan which addresses the long-term availability of assistance from service providers. As a part of the preapplication, applicants must provide a letter of commitment from each service provider detailing its ability and willingness to provide services. This letter must identify the type, scope, cost, term and any licensing requirements of services that will be provided to the project. If a local agency on aging will provide a service, the commitment can be contingent on the agency maintaining its level of funding. In these cases, it is imperative that applicants document the availability of alternative sources as

required in 1944.224(a)(6) of this section. As a part of the final application, applicants must provide a service agreement detailing the information contained in the letter of commitment. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year. Applicants should refer to paragraph IV of exhibit J of subpart C of part 1930 for further guidance.

(8) *Services provided to people who are not tenants of FmHA financed congregate housing.* If the meal facility serves people who are not tenants of the project, the applicant must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt service and reserve account attributable to the portion of increased space that is in excess of the needs of tenants in the project. In most cases, this will be a negligible amount that the meal provider can afford to pay. Applicants should refer to paragraph VII C of exhibit J of subpart C of part 1930 of this chapter for further guidance.

(b) *Group homes.* Group homes will provide housing in a residential environment for individuals capable of caring for themselves in the basic functions of everyday living. Group homes may be designated for elderly, disabled or other handicapped tenants as defined in § 1944.205 of this subpart. Appropriate common areas and facilities should be included to encourage participation by the tenants under the direction of a staff person in sharing the meal preparation, housekeeping, social and recreational activities within the home. It is not the goal of group homes to provide housing for tenants requiring constant medical attention. The following conditions are applicable to group homes:

(1) A group home is generally designed as a single household dwelling; however, it can also be a small multiunit structure. Specific design guidelines are provided in chapter 1 of Guide 2 of subpart A of part 1924 of this chapter. In addition, group homes must meet the following design criteria:

(i) The potential decreasing physical and mental capabilities of tenants must be considered in the design.

(ii) Interior spaces and finish materials must be residential in character.

(iii) Emergency lighting must be provided in every corridor, stairway and other means of egress.

(iv) The entrances to all living units must be on a route accessible to the physically handicapped.

(2) Prospective tenants must be medically evaluated to determine their ability to sustain independence in a group home. Applicants should be guided by paragraph V B 1 b of exhibit J of subpart C of part 1930.

(3) A group may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. Refer to exhibit J of subpart C of part 1930 of this chapter for additional information.

(4) A group home may be associated with another organization, such as a workshop for the developmentally disabled. However, it must be a separate entity and able to function without being dependent on another organization.

(5) Applicants must show that adequate support services needed by the tenants will be available on a continual long range basis. Support services can be provided by the project or by a State or local public agency. A nonprofit organization with an estimated ongoing service program also may be deemed capable of providing support services.

(6) Food stamps must be accepted from tenants as part of their contribution for meals in accordance with 1944.224 (a)(5)(C) of this section.

(7) Tenants who need services to remain independent may meet the tenant eligibility requirements contained in paragraph VI B 1 i of exhibit B of subpart C of part 1930 by taking the services provided by the project.

(8) Instructions on how to determine the per unit rental rates for group homes are stipulated in exhibit J of subpart C of part 1930 of this chapter.

(c) *Market studies for congregate housing and group homes.* In addition to the requirements of exhibit A-7 of this subpart, the following are applicable to market studies for congregate housing and group homes:

(1) Market studies must address the need for housing with services. Local agencies on aging and other groups familiar with the elderly can be a valuable source of information on the needs and wants of elderly people in the market area. Applicants can conduct a mail-out survey to age and income qualified elderly people if information is not available from other sources.

(2) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants to ensure feasibility of the project. The market study must clearly identify the expanded area and contain separate information on the additional communities. If used, mail-out surveys must clearly address the probability of respondents relocating to the proposed site.

(3) Market studies should include income information from the local social security office since many elderly people are dependent on social security and/or supplemental security income. This information will assist in determining if proposed tenants would have sufficient income to afford the services provided by the project.

(4) Demand for congregate housing generally is displayed by elderly people who are older than 70 years. Therefore, the market study must contain demographic information particular to those over the age of 62 and those over 70 years old. The study must also address the growth trends of people who are over 85 years old.

(5) Market studies must include information concerning alternative service providers as required in § 1944.224(a)(6) of this section.

(d) *Compliance with other laws.* Congregate housing and group homes must meet all applicable Federal, State and local laws, statutes, codes and/or ordinances pertaining to these types of housing and the services provided.

[55 FR 26644, June 29, 1990]

§§ 1944.225—1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed accordance with this section to assu that loan funds are used, to the exte possible, to provide housing for eligible tenants in need of adequate housing. Preapplication information is use to determine the applicant's eligibility project feasibility and priority fo available funds, thereby eliminatin proposals which have little or n chance for funding in the near future Information necessary in a preapplication consists of SF 424.2, "Application for Federal Assistance (For Construction)," and all additional information and material outlined in Exhibit A-6 Preapplications should be filed in the FmHA District Office.

(a) *Actions by the District Office.* (1 The District Director should handle initial inquiries and provide basic information about the program. He/she should provide the preapplication form SF 424.2 and Exhibit A-6 to this subpart. The District Director may assist applicants in completing SF 424.2 and the information required in Exhibit A-6. He/she should advise the applicant not to prepare or develop an application until notified by FmHA to proceed.

(2) Upon receipt of the Form SF 424.2 and all other required information and materials, the District Director will thoroughly review the package for completeness, accuracy, eligibility and conformance with program policy and regulations. A determination of eligibility, feasibility and ranking should be sent to the applicant by issuing Form AD-622, "Notice of Preapplication Review Action," not later than 45 days after receipt of a completed preapplication. (Ranking will be in accordance with the priority rating system). Incomplete preapplications will be returned immediately, not later than 15 days, to the applicant for completion. The District Director will use a check sheet and provide written documentation regarding all information not received.

(3) In cases where the District Director determines the applicant is not eli-

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gible, he/she will inform the applicant by issuing Form AD-622, and include the applicants' appeal rights in accordance with subpart B of part 1900 and the ECOA statement in subpart A of part 1910 of this chapter. Each District Director should assure he/she does not impose different processing conditions, standards and timeliness among applicants when reviewing preapplications.

(4) The District Director should check the Multi-Family Housing Information Status Tracking and Retrieval System (MISTR) to see if the applicant has pending preapplications in other districts or States. If so, the District Director should be sure that the applicant's pro forma statement shows that the applicant has the financial strength to meet the requirements of all preapplications.

(5) Processing of loan requests within annual allocations will be based on the priority points received.

(i) *Projects in areas or communities having a high percentage of substandard housing.* For this purpose, each State will use the county data based on the latest published census unless better and more specific statewide data is available. Some counties with a low percentage of substandard housing have areas with a substantially higher percentage of substandard housing. In these cases, you may use reliable income data for those specific communities/areas for assigning points. If the State mean of substandard housing exceeds 15 percent, use Chart A. If the State mean is 15 percent or less, use Chart B. Forty points to be distributed in the following manner:

A	B	Points
Over 34 pct	Over 18 pct	40 points
31-34 pct	17-18 pct	35 points
27-30 pct	15-16 pct	30 points
23-26 pct	13-14 pct	25 points
19-22 pct	11-12 pct	20 points
15-18 pct	9-10 pct	15 points
11-14 pct	7-8 pct	10 points
7-10 pct	5-6 pct	5 points
0-6 pct	0-4 pct	0 points

(ii) *Projects in areas or communities having the lowest median rural household income.* For this purpose, each State will use county data based on the latest published census unless better and more specific Statewide data is available. Some counties with high median incomes have areas of substantially lower income. In these cases, you may use reliable income data for those specific communities/areas for assigning points. Thirty points to be distributed in the following manner:

Less than 75% of State household income—30 points

75-79	25
80-84	20
85-89	15
90-94	10
95-100	0

(iii) *Projects which will serve the needs of rural communities located a number of miles from the FmHA eligibility line around urban areas considered ineligible for FmHA housing loans as determined by § 1944.10 of Subpart A of Part 1944 of this chapter.* Twenty points to be distributed based on map mileage from project site to urban area line over normally traveled roads in the following manner:

20 or more miles—20 points

15-19	15
10-14	10
5-9	5
0-4	0

(iv) *Projects located in communities or market areas which do not have subsidized rental housing in operation or authorized.* Ten points to be distributed in the following manner:

No subsidized rental housing project—10 points

No subsidized rental housing project of the same type (elderly, congregate, group type living, or family) as proposed—5

Existing or authorized rental project of the same type as proposed—0

(v) *Projects assured of having National Office approved rental subsidy from sources other than FmHA.* Twenty points will be distributed in the following manner:

51-100 percent of units—20 points

21-50 percent of units—15

10-20 percent of units—10

0-9 percent of units—0

(vi) *Projects designed and planned for elderly persons.* Ten points will be distributed in the following manner:

Elderly projects—10 points
Other type projects—0

(vii) *Projects in which specific tracts of land will be donated in accordance with § 1944.215(p)(4) of this subpart.* Five points will be distributed in the following manner:

Projects with donated land—5 points
Other type projects—0

(viii) In situations where priorities among competing loan requests are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations.

(ix) In other cases where requests are essentially equal, preference will be given to preapplications based on preapplication date.

(5) The District Director must compare the rated preapplications with other rated preapplications on hand. He/she must make a conscientious analysis of which loans will be able to be funded and document his/her analysis.

(6) Preapplications with an exceptionally low priority rating which are not likely to be funded within the next 12 months will be returned to the applicant with an indication of eligibility and informed that the priority rating is too low for processing. The District Director may, if appropriate, indicate ways to increase the priority rating.

(7) The District Director will fully review the remaining rated preapplications to determine feasibility. In cases where the application is determined to be infeasible, he/she will inform the applicant by using Form AD-622 and include the applicant's appeal rights in accordance with Subpart B to Part 1900 of this chapter.

(8) After determining the priority ranking of the preapplication, the District Director should record the points earned on Form FmHA 1905-11, "Application and Processing Card—Association," in column 1 immediately following the applicant's name.

(9) After completing the review and ranking in accordance with the priority processing system established in this subpart, the District Director will proceed as follows based on the application processing levels prescribed by the National Office:

(i) In States that allocate funds to districts:

(A) The District Director will select the highest ranking preapplications up to the prescribed processing levels for the district. Applicants having eligible preapplications that do not rank high enough and future applicants having eligible preapplications will be notified using Form AD-622 of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

(B) Preapplications within the District Director's approving authority will be reviewed in accordance with the provisions in § 1944.231(a) of this subpart. Applicants with the selected preapplications will be notified using Form AD-622 of their eligibility and feasibility and advised to develop an application. At this point, the District Director should provide the applicant with a copy of the Multiple Housing Management Handbook, Exhibit B of Subpart C of Part 1930 of this chapter.

(C) Selected preapplications in excess of the District Director's approval authority will be submitted to the State Office for review. The applicant will be notified in writing of this action.

(D) In accordance with Exhibit A-8 of this subpart, a copy of AD-622 and related documentation is to be sent to the State Agency for all proposals determined eligible and ranked high enough for current year funding.

(ii) In States that do not allocate funds to districts:

(A) The District Director will assemble the preapplication in a case file and forward the following to the State Director:

(*1*) SF 424.2.

(*2*) All information and material listed in Exhibit A-6.

(3) Original and one copy of Form FmHA 1940-21, "Environmental Assessment for Class I Action" or Exhibit H of Subpart G of Part 1940, dependent on whether the assessment is a Class I or Class II Action in accordance with Subpart G of Part 1940 of this chapter. This is only required at this stage for preapplications that will be submitted to the National Office for concurrence.

(4) The District Director's comments on eligibility and his/her recommendations.

(5) Comments and recommendations concerning the proposed project site resulting from an onsite visit to determine its overall desirability and conformance with the site location requirements indicated in § 1944.215(p) of this subpart.

(6) An updated copy of Form FmHA 1905-11.

(B) No Form AD-622 will be issued by the District Director until notified by the State Director.

(iii) In accordance with Exhibit A-9 of this subpart, after a preapplication is determined eligible, feasible and ranks high enough for funding in the current fiscal year, a copy of the AD 622 and attachments is to be forwarded to the State Agency.

(b) *Actions by the State Office.* (1) Unless the applicant is an individual or an organization adopting without change the articles and bylaws prescribed by Exhibits C and D of this subpart or by State supplements or has received clearance from OGC for the same type of financing, the documentation necessary to make an eligibility determination and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(2) The State Director will evaluate the preapplication and the District Director's written and detailed eligibility and feasibility determination and recommendation. The evaluation will include a review of the proposed project by the State Office Architect and an in depth review by the rural housing staff in accordance with documentation submitted as required by Exhibit A-6 of this subpart.

(3) Selected preapplications that exceed the State Director's approving authority will be sent to the National Office for evaluation, authorization and guidance. When preapplications are submitted to the National Office, the following information must be included in the submission:

(i) The complete and properly assembled preapplication case file.

(ii) The schematic or preliminary drawings and specifications, together with the architectural comments and recommendations of the State Office architect.

(iii) The information required by § 1944.213(b) of this subpart.

(iv) The District Director's comments and recommendations.

(v) The State Director's comments and recommendations.

(vi) Original and one copy of Form FmHA 1940-21, "Environmental Assessment for Class I Action" or Exhibit H of Subpart G of Part 1940, dependent on whether the assessment is a Class I or Class II Action in accordance with Subpart G of Part 1940 of this chapter.

(4) In States that allocate funds to districts, the State Director will notify the District Director of the review results. The State Director will return the preapplication to the District Office with authorization for the District Director to prepare and issued Form AD-622.

(5) In States that do not allocate funds to districts, the State Director should proceed as follows:

(i) After reviewing the priority rating of the preapplication, the State Director should rank and record the points earned on Form FmHA 1905-11. This form will be maintained in the State Office.

(ii) The State Director will select the highest ranking preapplications up to the prescribed processing levels for the State. Applicants having eligible preapplications that do not rank high enough and future applicants having eligible preapplication will be notified through the district office, using Form AD-622, of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplications at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

(iii) The State Director will return the preapplication and the review results to the district office. For selected preapplications, the State Director will execute authorization for the District Director to prepare and issue Form AD-622.

(c) *Summary.* The District Director will prepare Form AD-622, stating the results of the review. The original will be signed and delivered to the applicant, with a copy to the applicant's case file and a copy to the State Director.

(1) Applicants with preapplications which are not favorably considered will be notified in writing of the reasons why the request was not favorably considered and informed in accordance with Subpart B of Part 1900 of this chapter that they may request a further review of this decision.

(2) Applicants with preapplications which are eligible and feasible, but are unable to be selected for further processing, will be notified that their preapplications were determined eligible but lacked sufficient priority to authorize further processing at the present time. Applicants should be advised that their preapplication will be retained and considered for future funding based on its rating. If funding is not authorized within one year from the date of the Form AD-622, applicants will be notified in writing that their preapplication will no longer be considered unless it is resubmitted or updated. In addition, until loan funds are available, applicants will be advised against incurring obligations for legal, architectural and engineering work, perfecting interests in land rights and inviting construction bids or making other commitments which cannot be fulfilled without loan funds.

(3) When an applicant is notified to proceed with an application, the District Director should establish specific deadlines for developing the proposal to avoid unreasonable delays by applicants not prepared to proceed. In addition, the following paragraph should be contained on or attached to Form AD-622:

(i) "The review action taken by FmHA is based on representations made in your preapplication presented to FmHA. Any changes in approximate project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant must be reported to and approved by FmHA in writing."

(ii) "Any changes not approved by FmHA will be cause for FmHA to discontinue processing the application." All applicant requesting changes will be required to give full justification for each change and, if FmHA approval is not given, written reasons should be provided along with a 30-day negotiation period to resolve the differences."

(iii) "This action is not to be considered as loan approval or as a representation of the availability of funds."

(iv) "The loan docket may be completed on the basis of a loan not to exceed the amount on Form AD-622."

(v) "If a complete application has not been developed in approvable condition by the date specified on Form AD-622, FmHA reserves the right to discontinue processing the application."

(vi) In cases not receiving a National Office review, the following statement must be added: "You are advised against taking any actions or incurring any obligations which would either limit the range or alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with Subpart G of Part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval."

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 36268, Sept. 19, 1988; 55 FR 13503, Apr. 11, 1990; 55 FR 29561, July 20, 1990]

§ 1944.232 Rental assistance (RA) from sources other than FmHA.

RA from sources other than FmHA may be used in new or existing RRH projects. It may be used alone or may be combined with FmHA RA.

(a) *Provisions of memorandum of understanding.* FmHA will consider entering into a memorandum of understanding with other providers of RA, such as State or local public entities, profit or nonprofit organizations, individuals or other providers acceptable to FmHA. The memorandum of understanding will be executed between FmHA and the provider prior to the State Director issuing Form AD-622 for new projects. At a minimum, the memorandum of understanding must contain the following provisions:

(1) The dollar amounts of RA per unit and the length of time of RA will be provided.

(2) A copy of the proposed RA agreement, which is the instrument of agreement involving the tenants, owner and provider of assistance. FmHA will not be a party to the RA agreement nor have any responsibilities under the agreement. The RA agreement must state that:

(i) The payments should be paid directly to the tenants or the owner, who must advise the tenants of the amount and source of the assistance through the lease or a supplement to the lease.

(ii) Sufficient funds will be set aside in a way that assures availability of RA for the life of the RA agreement, which must be for at least 5 years. The method of supplying the funds must be clearly set forth.

(b) FmHA will provide reasonably required information including the tenant eligibility certification needed to execute the provisions of the RA Agreement and the memorandum of understanding.

(c) The memorandum of understanding (including the RA agreement) must be submitted by the State Director to the National Office for concurrence prior to execution with the provider of the RA. If the memorandum of understanding encompasses multiple projects and/or multiple borrowers, you must request blanket authorization for all projects covered by the memorandum of understanding instead of submitting each preapplication to the National Office.

§§ 1944.233—1944.234 [Reserved]

§ 1944.235 Actions subsequent to loan approval.

(a) *Precommitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

(1) The applicant must execute the appropriate loan agreement or loan resolution required in accordance with § 1944.215(f) of this subpart.

(2) FmHA will obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this chapter (FmHA Instruction 427.1) and §§ 1944.236(a) and 1944.246(b)(4) of this subpart.

(3) Unless initial operating capital is included in the loan, the applicant will furnish evidence that the initial operating capital is in place. If cash is being used, evidence of a deposit to the general operating account will be provided. If an irrevocable letter of credit is being used, the original Letter of Credit must be presented and maintained in the District Office with the casefile.

(4) The applicant will provide evidence indicating the terms and final arrangements for interim financing.

(5) The applicant will certify as to the availability or non availability of other government assistance as defined in § 1944.205 of this subpart immediately prior to loan closing. If other government assistance becomes available prior to loan closing, the loan amount will be decreased in accordance with paragraph (e)(3) of this section.

(b) *Transfer of obligations.* The transfer of fund obligations may occur only when:

(1) *Organizational entity remains the same.* The entity remains legally the same but a substitution of the

members occurs. All or part of the membership may change as long as eligibility is not affected. The project site location and market must remain the same.

(2) *Organizational entity changes.* The membership and their interests remain identical, the project site location and market are the same, but the legal entity changes.

(c) *Financing during the construction period.*—(1) *Interim financing.* When the amount of the RRH loan exceeds $50,000, the applicant should obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will proceed as if FmHA funds had been advanced from the standpoint of approving construction contracts, inspection of construction and assuring compliance with applicable equal opportunity and nondiscrimination.

(ii) The guide letter shown as Exhibit B of this subpart will be used to inform a proposed interim lender that a specified amount of funds have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the applicant is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should not be permitted to make disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213(b)(2) of this subpart must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds. Obligations incurred prior to loan closing and the start of construction will be handled in accordance with § 1944.213(d).

(v) A supervised bank account need not be established for funds obtained through interim financing except for any small amounts held to complete construction so loan funds can be fully advanced and AED can be established. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payments will be submitted through the District Director on Form FmHA 1924-18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant and FmHA representative shown on Form FmHA 1924-18. For recordkeeping purposes, Form FmHA 402-2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender and payments of estimates where FmHA has approved the estimate.

(vi) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible, in accordance with any contract documents, applicable State or local codes or ordinances and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. To evidence that there are no unpaid obligations outstanding in connection with the project, the applicant must submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer and attorney indicating that obligations for material, labor or services have been paid in full in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 1924-10, "Release by Claimants," or other similar form may be used for this purpose. If these statements cannot be obtained, the loan may be closed if all of the following can be met:

(A) Statements to the extent possible are obtained.

(B) The interests of FmHA can be adequately protected and its security position is not impaired.

(C) Adequate provisions are made for paying the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond.

(2) *Multiple advances of RRH loan funds.* If interim financing is not available and the applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for these purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing these loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (c)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, there should be no more than 24 advances. These advances should generally be used within 2 years of loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering or architectural costs, interest and other expenses as needed. The borrower will prepare Form FmHA 440-11, "Estimate of Funds Needed for 30-day Period Commencing ____________," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or his/her designee.

(iii) After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested through field office terminals in accordance with the MFH user procedure. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440-11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	$40,000

An advance of $40,000 would then be available on July 1, the date of loan closing.

(iv) The second advance is also based on the borrower's estimate prepared on Form FmHA 440-11 which must be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$20,000
Architectural	1,000
Total	$21,000

(v) When the project is substantially complete in accordance with § 1944.235(c)(i)(vi), schedule final payment to the contractor for disbursement. Withhold funds over the amount needed to cover the costs for correcting or completing the minor items identified from the contractor's final payment in accordance with the requirements of Subpart A to Part 1924 of this chapter until full performance. Any funds withheld should be deposited in the supervised bank account so the loan can be fully advanced and AED can be established.

(vi) If funds remain after the loan is fully disbursed and AED has been reached, they must be put into a supervised bank account. The funds cannot be returned on the loan to be drawn later since AMAS will treat as a refund.

(vii) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(d) *Requesting the check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with paragraph (c)(1) or (c)(2) of this section. The District Director or his/her designee will then order the loan check through field office terminals so that it will be available on or just before the date set for loan closing.

(e) *Increase or decrease in the amount of the loan.*

(1) If it is necessary to increase the amount of the loan within *the same fiscal year* but before loan closing, the loan approving official or District Director will request that all distributed docket forms be returned to the district office. The loan docket will be revised accordingly and reprocessed provided no funds have been disbursed. The State Office, through a field office terminal, must deobligate the existing obligation and enter the new amount to be obligated.

(2) If it is necessary to increase the amount of the loan in *the next fiscal year* but before loan closing, the District Director must process a subsequent loan for the amount of increase.

(3) If it is necessary to decrease the amount of the loan before closing, the deobligation will be processed through field office terminals.

(f) *Cancellation of the loan.* Loans may be canceled after approval and before loan closing in accordance with instructions on the Form Manual Insert (FMI) for Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation."

(1) *Treasury check method.* If the loan check is received in the District Office, the District Director will return the check as prescribed in FmHA Instuction 102.1 (available in any FmHA office), except if the check was issued by the National Finance Center (NFC). If the check was issued by NFC, cancel under FmHA Instruction 2024-P (available in any FmHA office).

(2) *Notification.* Notify all interested parties of cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, notify the applicant that the decision may be appealed in accordance with Subpart B to Part 1900 of this chapter.

(g) *Handling the loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 (available in any FmHA office and Subpart A of Part 1902 of this chapter.

(h) *Prerent-up conference.* To promote proper planning for initial rent-up and occupancy, the District Director will meet with the applicant and management firm, if any, soon after loan approval. Among the items that should be discussed are the advertisement of available units, the affirmative fair housing marketing practices, tenant eligibility and tenant selection criteria.

(1) The District Director will review the applicant's marketing plan to determine that it is complete and all supplemental information is provided. If the plan needs to be modified before marketing activity begins, approval must be granted from the official authorized to approve the loan. The District Director will review the approved operating budget to determine if it is still adequate for the initial operating period. If it is not adequate, a rent change will be made according to Exhibit C of Subpart C to Part 1930 of this chapter.

(2) The District Director should be assured that the applicant will sincerely direct marketing activity in an

effort to attract applications for housing from all groups in the market area. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex or national origin, outreach efforts will be extended to persons who would not be expected to apply for the housing. The efforts will be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy by any tenant, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupany results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective and/or if there are changes in the housing markets, the applicant may be required to modify the marketing plan for the project. If the District Director determines that the applicant is in noncompliance with the plan and a modification to the plan is not warranted, the matter will be referred to the FmHA Administrator, attention Equal Opportunity Staff Director, through the State FmHA compliance officer.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 26590, July 14, 1988; 54 FR 14337, Apr. 11, 1989; 54 FR 39728, Sept. 28, 1989; 55 FR 29561, July 20, 1990]

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH loans will be closed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any State supplements. Loan dockets for organization and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization if the cost is in accordance with § 1944.212(j) of this subpart.

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, Form FmHA 427-1 (State), "Real Fstate Mortgage for ________," will be used. For loans to organizations, Form FmHA 427-1 will be modified as prescribed by or with the advice of OGC with respect to the name, address and other identification of the borrower, the style of execution and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for as long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for as long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, include an additional paragraph in the mortgage to read as follows:

> This instrument also secures the obligations and convenants of borrower set forth in borrower's Loan Resolution (Loan Agreement) of (*Date*), which is hereby incorporated herein by reference.

(3) For a loan to an individual when a loan agreement is not used, additional paragraphs will be included in the mortgage to read as follows:

(i) "Occupancy of the housing and related facilities on the property will be limited to eligible tenants as defined in the regulations of the Farmers Home Administration unless the Government gives prior written approval to other occupancy."

(ii) "As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of borrower; submit regular and special reports pertinent to the purpose of the loan or the Government's financial interest; subject rents and charges and other terms of rental agreements with tenants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing will be first used to pay operation and maintenance costs of such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan."

(4) For a loan to a limited partnership, the following nonrecourse language should be inserted, subject to modification by the OGC:

> No partner, either general or limited, will have any personal liability for the payment of all or any part of the indebtedness.

(5) For all section 515 RRH loans, made pursuant to a contract entered into prior to December 15, 1989, the following language will be included in the mortgage:

> The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of title V of the Housing Act of 1949 and FmHA regulations then extant during this ______ (15 years for unsubsidized and 20 years for subsidized loans) year period beginning ______ (the date of last loan on the project is closed). No person occupying the housing will be required to vacate prior to the close of such ______ (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the Government.

(6) For all section 515 RRH loans made pursuant to a contract entered into on or after December 15, 1989, the following language will be included in the mortgage:

> The borrower and any successors in interest agree to use the housing for the purpose of housing people eligibile for occupancy as provided in section 515 of title V of the Housing Act of 1949, and FmHA regulations then extant during the full term of this mortgage. No eligible person occupying housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant may seek enforcement of this provisions as well as the Government.

(c) *Promissory note.* (1) Form FmHA 1944-52, "Multiple Housing Promissory Note," will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instruction for preparation in the FMI for the note will be followed.

(2) The amount to be shown on the note will be obligated amount as shown on Form FmHA 1944-51, "Multiple Family Housing Obligation-Fund Analysis." The note will be dated the date of loan closing except as authorized in Part 1807 of this chapter (FmHA Instruction 427.1). If the first day of the month falls on Saturday, Sunday or a holiday, the note may be dated the first, loan closing will be the last working day prior to the first and the closing documents will be filed on the first working day following the first.

(3) Payments on RRH loans will be scheduled on the note in accordance with the FMI and as provided in § 1944.215(d) of this subpart.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(5) All loans will be closed on PASS as described in Subpart K of Part 1951 of this chapter. If the loan is a subsequent loan, all other loans on the project must be converted to PASS.

(6) All RRH loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be sent to the National Office prior to loan approval

with all necessary information for review and further instructions.

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy, including the recording data showing the date and place of recordation and book and page number, will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.*

(1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established at the district office following the requirements of FmHA Instructions 1905-A and 2033-A (available in any FmHA office).

[53 FR 2159, Jan. 26, 1988, as amended at 55 FR 29561, July 20, 1990]

§ 1944.237 Subsequent RRH loans.

(a) A subsequent RRH loan is made to an applicant/borrower to complete, improve, repair, make modifications and/or expand the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart B of part 1965 of this chapter to avert prepayment. All subsequent loans made pursuant to a contract entered into on or after December 15, 1989, cannot be prepaid.

(b) If the designation of an area changed from rural to nonrural after the initial FmHA loan was made, a subsequent loan can be made, only to make necessary improvements and repairs to the property or for equity and other purposes when necessary to avert prepayment.

(c) In case where the loan is to complete the original housing under the initial FmHA loan:

(1) If the applicant/borrower provided an initial investment greater than required under the intial FmHA loan, the excess may be credited toward the required 3 percent initial investment of the subsequent loan; the applicant/borrower should only be required to put up additional funds for this purpose if needed. The same applies to initial O and M requirements.

(2) If the initial investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional 3 and 2 percent amounts to cover the subsequent loan. The 2 percent O and M amount can be in the form of cash or an irrevocable letter of credit as described in § 1944.211 (a)(6) of this subpart.

(d) If the loan is to repair and/or improve an existing project which has been in operation for some time, then:

(1) The applicant/borrower should not be required to provide the initial 2 percent O and M amount since its purpose is to cover project start-up costs.

(2) The applicant/borrower must provide the initial 3 percent investment unless it provided more than the required initial investment when the initial loan was made. When the applicant/borrower has more than required amount invested in the initial loan, the excess may be credited toward the required 3 percent investment for the subsequent loan. The applicant/borrower should be required to contribute additional funds only if needed. The applicant/borrower will not be given consideration for any increased equity or value that the property may have since the date of the initial FmHA loan.

(e) A subsequent loan will be subject to the restrictive use provisions cited in § 1944.236(b)(5) of this subpart except when the loan is made for equity and other purposes to avert prepayment. In the latter case, the provisions of Exhibits E-3 and E-4 of Subpart B of FmHA Instruction 1965 will be used, as appropriate. The cited language for the subsequent loan only must be appended to the mortgage referencing all notes for a term beginning on the date of loan closing. The advice of OGC should be sought in carrying out the provisions of this paragraph.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7492, Mar. 9, 1988; 53 FR 13245, April 22, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 6246, Feb. 22, 1990; 55 FR 29562, July 20, 1990]

§ 1944.238 Prohibition against prepayment.

The Agency shall not accept an offer to prepay, or request refinancing of any loan made or insured under section 515 pursuant to a contract entered into on or after December 15, 1989. For purposes of this requirement, the date a "contract is entered into" is the date on which the Form FmHA 1944-51 is mailed or delivered to the applicant/borrower.

[55 FR 29562, July 20, 1990]

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH.

Any tenant or prospective tenant seeking occupancy or use of RRH, RCH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital or familial status, handicap or National origin may file a complaint in person with, or by mail to, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC, 20410, or any HUD Office, or to the Secretary of Agriculture, Washington, DC, 20250. If the complaint is made to an FmHA county, district, or State office, it must be directed to the Director of Equal Opportunity Staff, National Office, the FmHA employee in charge of that office. When a complaint is sent to FmHA-EOS by a county or district office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent.

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA's housing program failing to comply with the requirements of title VIII, as amended by the Civil Rights Act of 1968, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure.

[55 FR 6246, Feb. 22, 1990]

§ 1944.240 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the RRH program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

§§ 1944.241—1944.245 [Reserved]

§ 1944.246 Loan approval.

(a) *Authority.* Loans will be approved in accordance with this subpart and subpart A of part 1901. The State Director may redelegate loan approving authority in writing to State Office employees.

(b) *Loan approval action*—(1) *Responsibilities of loan approving offi-*

cial. The loan approving official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approving official will determine that:

(i) The applicant is eligible and has legal authority to contract for a loan and enter into the required statements.

(ii) The location of the housing meets the requirements outlined in § 1944.215(p) of this subpart.

(iii) The funds are requested for authorized purposes.

(iv) The proposed loan is sound.

(v) The security is adequate.

(vi) All preapproval requirements have been met, including the applicant's execution of Form FmHA 400-4.

(vii) For projects with four or less units, the State Director has taken the necessary action to comply with § 1944.406 of subpart I of part 1940 of this chapter.

(viii) All other requirements will be met.

(2) *Approval or disapproval of a loan*—(i) *Approval.* Before the loan approving official executes documents evidencing loan approval, a complete review of the proposed management and rental procedures must be made to assure compliance with title VI of the civil Rights Act of 1964 and the Rehabilitation Act of 1973. If the loan approving official is assured of compliance, he/she may execute the loan approval documents. When a loan is approved, Form FmHA 1944-51 will be completed according to the instructions on the Forms Manual Insert. The approving official will insert a statement in block 48 of Form FmHA 1944-51 advising the applicant that the amount of the loan may decrease if other government assistance as defined in § 1944.205 of this subpart becomes available to the applicant before loan closing.

(ii) *Disapproval.* If a loan is disapproved after the docket has been developed, the reason for the action will be shown on the original Form FmHA 1944-51 and the form will be initialed and dated. The District Director will notify the applicant of the reasons for disapproval. The disapproved docket will then be handled in accordance with subpart A of part 2033 of this chapter. If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that it may request a further review of the decision in accordance with subpart B of part 1900 of this chapter.

(3) *OGC closing instructions.* For a loan to an organization, or an individual in special cases, the approved docket, including any title evidence, will be sent through the State Office to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the docket. No docket will be considered which does not include the required resolution or agreement. The OGC will route the docket, including closing instructions and any legal documents, to the District Office through the State Office.

[55 FR 29562, July 20, 1990]

§§ 1944.247—1944.249 [Reserved]

§ 1944.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0047. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 40 hours per response, with an average of 7 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to The Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0047), Washington, DC 20503.

[55 FR 29562, July 20, 1990]

EXHIBITS TO SUBPART E

EXHIBIT A—HOW TO BRING RENTAL HOUSING TO YOUR TOWN

I Introduction
II Applying for a Loan
III Review of the Preapplication
IV Developing the Loan Docket
V Review of the Complete Docket
VI Construction
VII Open House
VIII Exhibits
  A-1 Legal Services Agreement (For Nonprofit Organizations)
  A-2 Survey of Existing Rental Housing
  A-3 Rental Housing Survey
  A-4 Rental Housing Survey Summary
  A-5 Housing Allowances for Utilities and Other Public Services
  A-6 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) Loan
  A-7 Outline of Professional Market Study
  A-8 Information to be Submitted with Application for a Rural Rental Housing (RRH) Loan

I. INTRODUCTION

A. Most areas in rural America need more adequate rental housing. Some people with modest incomes live in impoverished housing that is cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Other households that prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities.

B. To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations and individuals may qualify for loans. Information about these loans is available at the local FmHA office.

C. This handbook will assist interested persons and groups in applying for a Rural Rental Housing (RRH) loan. It also briefly explains requirements regarding the construction and operation of the rental housing.

D. The basic guidelines in this handbook apply to all applicants; however, some procedural requirements may vary depending on the size of the project being proposed and the type of applicant/borrower. However, in no instance will different policies, practices or procedures be utilized in the evaluation or in determination of the creditworthiness of any organization or person(s) in connection with the provision of any RRH, RCH loan or other financial assistance for a project or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, marital or familial status, age, or National origin.

E. The objective of the RRH loan program is to provide credit for rental housing that serves the needs of eligible very low-, low-, and moderate-income permanent tenants.

F. Successful rental housing depends on the existence of the following three important conditions:

1. There must be a need for the rental housing to be built.

2. The housing must fit the needs of prospective tenants from the standpoint of location, design and cost.

3. The applicant must provide good management.

G. An applicant for a loan must provide adequate information to FmHA to show that these basic conditions can be met.

II. APPLYING FOR A LOAN

A. An individual, organization or group organizing to provide housing may apply for an RRH loan through the local FmHA District Director serving the area where the housing will to be located.

B. The applicant should read Subpart E of Part 1944 of this chapter before applying for a loan. The applicant also should discuss the proposed housing with the District Director before completing a preapplication.

C. Applying for a loan with SF 424.2 (for preapplication submission). Included with the preapplication form should be the supporting material or information listed in Exhibit A-6. This information will enable FmHA to determine:

1. The eligibility of the applicant;

2. The feasibility (economic, environmental and architectural) of the proposed housing; and

3. Whether the proposed housing can appropriately be financed by FmHA.

D. This information usually can be furnished by the applicant without hiring extensive professional services. It should be factual and specific based on objective investigations and realistic estimates.

III. REVIEW OF THE PREAPPLICATION

A. If the proposal exceeds the District Director's approval authority, he/she will submit the docket to the FmHA State Director for consideration. If the proposal exceeds the State Director's approval authority, he/she will send the docket, including comments and recommendations of the District and State Office staffs, to the FmHA National Office in Washington, DC for review.

B. The completeness and accuracy of information submitted with the preapplication is especially important when reviews are necessary by FmHA offices remote to the proposed site and without direct knowledge of conditions and circumstances involved with the project. The description of the planned housing must be clear, complete, and concise to ensure timely reviews by FmHA.

C. When the reviews are completed, the District Director will notify the applicant, using Form AD-622, "Notice of Preapplication Review Action," of FmHA's decision.

If it appears a loan can be made, the District Director will explain the additional steps that will be required. If favorable action cannot be taken on the preapplication, the District Director will explain why and may be able to suggest changes to permit a loan to be made.

IV. DEVELOPING THE LOAN DOCKET

A. When an applicant is authorized to submit a formal application, the District Director will review the items required in Exhibit A-8. The amount of information required will vary based on the complexity and size of the proposed project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required.

The District Director will assemble this information and complete the docket.

B. The following information will be helpful in developing a loan docket. The first two items are applicable only to nonprofit organizations. The other items apply to any applicant. In addition, the requirements of Exhibit A-6 of this instruction must be met when developing a preapplication and the requirements of Exhbit A-8 must be met with developing an application.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles of incorporation and bylaws.*

a. *Sterring committee.* The group may choose a steering committee to act for it. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly for a reasonable fee.

b. *Articles of incorporation and bylaws.* FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

c. *Attorney's fees.* Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A-1 for a sample copy of an agreement.

d. *Board of directors.* The steering committee usually selects the incorporators for the corporation. The board of directors is responsible for conducting the corporation's business, including obtaining the loan and providing overall management after the housing is completed.

2. *Obtaining broadly based membership.*

a. A nonprofit corporation applying for a loan must have and maintain a broadly based local membership, including leaders in the community, representing a variety of interests in the community. The members may be individuals or organizations but each member is limited to one vote.

b. The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee and provide assurance that the housing will be a success and the purpose of the loan carried out.

c. In RRH loans to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance and adequate community support of the housing project over the expected life of the loan are important.

d. A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

(1) *Number of members required.* The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(2) *Contributions by members.* Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupany of the housing.

3. The applicant should communicate with officials of the community early in the development of the proposal to explain the benefits of the proposed housing to the community. This meeting will serve to remove the uncertainty of the impact of the housing on the community and may aid in a timely processing of the preapplication. The

support of community officials is helpful in obtaining environmental clearances, possible zoning changes, favorable taxation, etc.

4. *Initial operating capital.*

a. All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in a loan made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when the applicant is an organziation, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, and other initial expenses.

b. At least 2 percent of the total development cost of the project is required for initial operation and maintenance costs. The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupany and rental income will be available. The actual budget may indicate that more than 2 percent is needed.

5. *Analysis of market to determine demand for rental housing.*

a. Applicants should discuss with the Distict Director the type of market analysis that will be needed. Applicants must comply with paragraph II of Exhibit A-6 when preparing market information.

b. Exhibits A-3 and A-4 are sample forms which may be modified by the applicant to assist in the assembly of the information for the market analysis.

6. *Planning to serve the market.*

a. Planning the housing to serve the market in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent, living at a cost eligible tenants can afford. Well planned housing is:

(1) Convenient, attractive, safe, and comfortable.

(2) Easily maintained.

(3) Located where its tenants can have easy access to the goods and services they require for daily living.

(4) Planned to meet all codes, regulations, and acceptable construction practices.

(5) Priced to rent for no more than the prospective tenants can afford.

(6) Energy efficient and complies with FmHA's thermal performance standards.

b. The District Director and State Office architect can provide information that will help the applicant in planning the housing.

7. *Selecting an architect.*

a. The services of an architect are required for all housing projects which have more than five units. The cost of a registered architect/engineer may be included in the loan.

b. Before anything more than schematic drawings are prepared, the applicant and its architect, the FmHA architect/engineer and the District Director should arrange a meeting. This meeting will acquaint the applicant's architect with the purposes of the housing and FmHA's requirements. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

(1) Objectives of the rental housing program.

(2) Design requirements that will produce good housing at reasonable cost.

(3) States at which FmHA must review plans and specifications.

(4) Services the architect will be expected to perform.

(5) Agreement between architect and applicant.

8. *Selecting a site.*

a. The location of the housing is an important part of planning to serve the market. Tenants should have easy access to required services. A desirable residential setting within the rural community is essential.

b. Site cost is also important. The total cost of the site, including the cost of improvements and the price of the land, must be considered. Both may be included in the loan. However, loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

c. Before buying a site, the applicant should consult the architect to determine the suitability of the site for the proposed housing. The applicant must consider the site requirements detailed in paragraph III of Exhibit A-6 of this subpart. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA loan without consulting with the District Director and prior to the Agency's completion of the environmental impact review.

9. *Drawings, specifications and cost estimates.*

The size, complexity, and cost of rental housing projects can vary from a duplex located on a small building lot to a complex of buildings located on a site containing several acres. The applicant must provide drawings and specifications in accordance with paragraph IV of Exhibit A-6 of this instruction.

10. *Budgets.*

a. The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

b. This budget should be based on a typical annual operation after the project is occupied. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes including:

(1) Helps determine rental rates.

(2) Indicates financial soundness.

(3) Serves as a guide for paying expenses.

c. Form FmHA 1930-7, "Statement of Budget and Cash Flow," and accompanying Exhibit A-5 of this subpart are a sample budget form and utility allowance form.

11. *Loan resolution or loan agreement.* When the applicant is a corporation or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

12. *Management plan.* A detailed management plan will be developed which will outline the basic policies and procedures to be followed and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of Subpart C to Part 1930 of this chapter.

13. *Manager and caretaker.*

a. A comprehensive management program is essential to the successful operation of the project. A carefully written plan should be developed in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

b. The use of an onsite manager should be based on the size of the project. The manager should be readily available to the tenants. The manager might be one of the tenants or a member of the board of directors of a nonprofit corporation. The manager's duties should be specified in the management plan.

c. The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that enterprise is being managed successfully.

14. *Occupancy policies.*

a. Applicants should review carefully the occupancy requirements with the District Director. Particular attention should be given to the following requirements:

(1) The housing must be open to all eligible tenants regardless of race, color, religion, sex, handicap, marital or familial status, age or National origin.

(2) The incomes of tenants must be within the maximum income limits approved by FmHA.

b. Additional guidance concerning occupancy in congregate housing projects can be found in Exhibits B-10 and B-10A to Subpart C of Part 1930 of this chapter.

15. *Rules and regulations.* The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

16. *Lease.* The applicant should develop an application form for occupancy and a lease agreement form in accordance with the requirements of Subpart C of Part 1930 of this chapter. Copies of these forms should be included in the loan docket.

17. *Affirmative Fair Housing Marketing.* In order to promote proper planning for initial rent-up and occupancy, the District Director will meet with the applicant after loan approval, preferably at the preconstruction and/or the prerent-up conference to discuss the Affirmative Fair Housing Marketing Plan or other similar agreement approved for the project.

V. REVIEW OF THE COMPLETE DOCKET

A. When the applicant has developed the complete loan docket, it should furnish and discuss the information with the District Director. SF 424.2, the information and materials listed in Exhibit A-8 plus FmHA forms provided by the District Director become the loan docket.

B. If the docket is submitted to the State Office for consideration, the State Director will indicate any special requirements that need to be met before loan approval or loan closing.

C. Commercial financing should be used during the interim construction period if available at reasonable rates and terms. FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay the interim construction indebtedness. Draws on interim loan funds will be made only as needed and will require the joint approval of the applicant and the FmHA District Director.

D. In other cases FmHA can make advances of loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. The loan funds are disbursed from the bank account as needed. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

VI. CONSTRUCTION

The start of construction is the first physical sign that the housing will become a reality. The construction period is a most critical period of time.

A. *Starting construction.* Construction should not be started until the FmHA loan is closed or the FmHA commitment has been made to the interim lender.

B. *Competitive bidding.*

1. Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter sent after the loan is authorized will instruct the District Director to have the applicant or its architect complete the necessary bid documents.

2. The applicant and the architect should invite competent contractors to bid on the housing. If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction, a qualified FmHA representative and the applicant and its architect will inspect the work to protect their respective interests in the project. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

C. *Construction without competitive bidding.* When competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract concurred with by FmHA will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, inspection of the work will be performed by the architect's staff. The applicant and FmHA will inspect the construction to protect their respective interests in the project. Payments will be made to the contractor in accordance with the terms of the contract.

VII. OPEN HOUSE

Promotion of the housing availability should start at least 90 days prior to completion. The applicant may want to create interest in the housing and build up the list of prospective tenants by having a dedication ceremony. This will attract attention and remind the local residents of what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

VIII. EXHIBITS

The following exhibits may be used when applicable and, if necessary, adapted to meet the specific needs of applicants.

Exhibit	
A-1	Legal Services Agreement
A-2	Survey of Existing Rental Housing
A-3	Rental Housing Survey
A-4	Rental Housing Survey Summary
A-5	Housing Allowances for Utilities and Other Public Services
A-6	Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) Loan
A-7	Outline of Professional Market Study
A-8	Information to be Submitted with Application for a Rural Rental Housing (RRH) Loan

[53 FR 2159, Jan. 26, 1988, as amended at 55 FR 6246, Feb. 22, 1990; 55 FR 13503, Apr. 11, 1990]

EXHIBIT A-1—LEGAL SERVICES AGREEMENT (FOR NONPROFIT ORGANIZATIONS)

(SAMPLE)

Agreement made this ______ day of ______ 19 ___ between the ________ hereinafter called the owners, and ____________, hereinafter called the attorney, witnesseth: ____________.

Whereas the owners intend to form a nonprofit corporation, hereinafter called the corporation, to construct and operate a rural rental housing project in

____

(Town)

____

(County)

____

(State)

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the corporation, and to perform all other customary legal services necessary to the organization, financing, construction and initial operation of the proposed rural rental housing project, such services to include but not be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the corporation and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for and furnish advice and assistance to the owners, and to the board of directors and officers of the corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction con-

tracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the corporation or financing, constructing, and initially operating the proposed housing project.

3. Review construction contract, bid-letting procedure, and surety and performance bonds.

4. Examine real estate titles and prepare, review and record deeds and any other instruments.

5. Cooperate with the architect employed by the owners or the corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Render legal opinions as required by the owners or the corporation or the Farmers Home Administration, United States Department of Agriculture.

7. Owners agree to pay the attorney for professional services in accordance with this agreement, as follows:

____

____

The fees to be payable in the following manner and at the following times:

____

____

The attorney states and agrees that of the above total fees, ____________, represents fees for services in connection with the organization and incorporation of the corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation, the corporation fails or refuses to adopt and ratify this agreement by appropriate resolution within ______ days, this agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this ______ day of ________ 19 ___.

Attorney: ______________________

Owners: ______________________

____

____

____

EXHIBIT A-2—SURVEY OF EXISTING RENTAL HOUSING

Name	No. of units	BR mix	Type	Year built	Rent	Vacancies	Location	Amenities
								Drapes Carpet Central cooling Dishwasher Garbage disposal TV cable

EXHIBIT A-3—RENTAL HOUSING SURVEY

(SAMPLE)

A rental housing project is being planned for (name of community.) The project would provide comfortable living at monthly rental rates of (Indicate proposed basic rent by number of bedrooms.) Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50-61 [ ] 35-49 [ ] Under 35 [ ]

2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? yes [ ] no [ ]

3. Number of person(s) in your household: ___.

4. Approximate annual income from all sources including any social security pension, payments made on behalf of minor children, public assistance, etc.: $_____.

5. Do you own ( ) or rent ( ) present residence?

6. Do you live in house ( ) apartment ( ) room ( ) mobile home ( ) on a farm ( ) in town ( )?

7. Is your present housing modern ( ) not modern, but adequate ( ) inadequate ( ). If inadequate, in what respect? _____.

8. What amount of monthly rent do you pay with utilities included? $_____.

9. Would you pay 30 percent of your monthly income for modern housing for your family? yes ( ) no ( )

10. Would you be willing to move in if an apartment were available_____, 19___? yes ( ) no ( )

11. Do you have a car? No. 1, 2, 3 (circle)

Name ______________________

Address ______________________

(including city/town)

Telephone Number ______________

Location of employment ___________

For Elderly and Congregate Housing

12. Number of meals you would like prepared for you per day ______

13. What other services would you like to have available to you?

	Yes	No
a. Housekeeping services		
b. Personal care services		
c. Social and recreational activities services.		
d. Linen and laundry services		
e. Health and medical related services.		
f. Beauty and barber services		
g. Transportation or access services.		
h. Other (specify)		

14. List any hobbies or organizational membership you have.

Note to Applicant: This sample survey form is for your use in evaluating the need for new rental units in the community and its market area. You should be prepared to explain the methodology of the survey since FmHA will be spotchecking the respondents' answers. How the survey is performed can influence the outcome; therefore, it is encumbent upon you to see that the manner in which it is conducted is suitable and acceptable to FmHA. For instance, compensation being paid to someone for survey work should not be dependent upon the number of respondents who would be willing to move into the project. The survey should be based on a random sampling of persons now residing in the market area. Things to avoid are surveying from the telephone book listing or a door-to-door canvass of a certain segment of the community. We want the development of rental units to be based upon actual circumstances prevailing in the market area in order that the housing development will present a secure and economical living arrangement for the persons in need of the housing.

Exhibit A-4—Rental Housing Survey Summary

(SAMPLE)

Item	Age—Head of household			
	62 or over	50 to 61	35 to 49	Under 35
Handicapped:				
Yes				
No				
Household Size (Bedrooms Needed):				
1 or 2 persons (1 bedroom)				
3 to 4 persons (2 bedrooms)				
5 to 6 persons (3 bedrooms)				
7 to 8 persons (4 bedrooms)				
Annual Income:				
Less than $3,420				
$3,421–4,925				
$4,926–6,440				
$6,441–7,960				
$7,961–9,475				
$9,476–10,990				
$10,991–12,505				
$12,506–14,020				
$14,021–15,537				
$15,538–17,053				
Over $17,054				
Present Housing:				
House				
Apartment				
Room				
Rent				
Own				
Modern				
Not modern, but adequate				
Inadequate				
Rent:				
Less than $55				
$55–85				
$86–115				
$116–145				
$146–175				
$236–265				
$266–295				
$296–325				
$176–205				
$206–235				
Over $325				
Willing to move into housing when completed:				
Yes				
No				

Exhibit A-5—Housing Allowances for Utilities and Other Public Services

PART I

Name of Borrower

Location and Identification of Project

Utility or service	Monthly dollar allowances					
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
Heating:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
d. Oil						
Air Conditioning						
Cooking:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
Other electric lighting, refrigeration, etc.						
Water Heating:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
d. Oil						
Water						
Sewer						
Trash Collection						
Other (specify)						
Total allowance (Round to next highest dollar)						

Prepared by: ______
Borrower or Agent ______
Title ______
Signature ______
Date ______

Approved by Farmers Home Administration
Name ______
Title ______
Signature ______
Date ______

PART II

Block A

To: ______
Name of Tenant

______
Address of Tenant
No. of Bedrooms ______

You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payment of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities

______
Signature of Borrower or Agent

______
(Date)

Block B

Allowance for utilities and services billed directly to and paid by tenant	Per month
Heating	$
Air Conditioning	
Cooking	
Other Electric	
Water Heating	
Water	
Sewer	
Trash Collection	
Other (Specify)	
Total (Round to next highest dollar)	

INSTRUCTIONS FOR PREPARATION AND USE OF HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

I. *General.* These instructions are for completing Exhibit A-5 for the establishment and use of approved utility allowances for tenants. The objective will be to establish allowances at levels that will apply to the majority of the households assigned to the specified size unit.

II. *Determining allowances.*

A. *Existing construction.* The borrower will provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases will be used to estimate utility allowances. The following local sources should be contacted as appropriate:

1. Electric utility suppliers.
2. Natural gas utility suppliers
3. Water and sewer suppliers.
4. Fuel oil and bottle gas suppliers.
5. Public service commissions.
6. Real estate and property management firms.
7. State and local agencies including public housing authorities.

In cases where a project uses a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors will be used to determine the pro rata share of utility costs or public service fees per living unit:

Size of unit	Factor
0–BR	0.5
1–BR	0.7
2–BR	0.9
3–BR	1.1
4–BR	1.4
5–BR	1.6

Example: An 8-plex structure containing four 1-bedroom apartments and four 2-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated as follows:

Four (one-bedroom) @ .7	=2.8
Four (two-bedroom) @ .9	=3.6
Total	6.4

Total use total of factors ——x cost per kilowatt-hour (kwh)-average billing (assume $.04 per kwh)

42,000/6.4 x .04=262.50

unit factor x average billing=–unit allowance

(one bedroom)/.7 x 262.50=$183.75/yr.

(two bedroom)/.9 x 262.50=$236.25/yr.

B. *New construction.* The applicant, with assistance from its architect, mechanical engineer or other heating and cooling system specialists, will provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs will be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments," or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies and from other sources listed in paragraph II A above.

C. *Type of allowance.*

1. Separate heating and cooling allowances will be estimated for the various types of multiple family housing financed by FmHA in the project. For example, separate allowances may be needed for duplexes, row or townhouses, or for garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether the tenants will have responsibility for lawn care.

2. Allowances for air-conditioning will be established only for projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the tenants know beforehand what the combination of utilities for any unit rented will be, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity, the rates used for lighting, refrigeration and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

III. *Preparation by borrower or applicant.*

A. *Applicable projects.* Except for projects operating on a profit basis, Exhibit A-5 will be completed in an original and three copies in all instances where the tenants pay utilities or authorized services directly. When the borrower pays all utilities, Part I of Exhibit A-5 may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowances will be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA. Backup data and necessary documentation should be included with the submission.

B. *Submission of supporting data to FmHA.* The applicant will submit to FmHA adequate data to justify the utility allowances for the project. The data will include the following:

1. Completed Exhibit A-5.

2. List of local sources contacted for information and copies of any data provided by such sources.

3. Any data on allowances already established for the area.

4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA.* If FmHA finds the allowances acceptable, the approval portion of Part I will be completed. The District Director will keep a copy for the District Office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent action by borrower.* After approval by FmHA, the borrower will complete Part II of Exhibit A-5 and provide copies for each tenant paying utilities directly by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each utility and service which is to be paid by the tenant. If all utilities and services are paid by the borrower, Exhibit A-5 need not be attached to the lease.

EXHIBIT A-6—INFORMATION TO BE SUBMITTED WITH PREAPPLICATION FOR RURAL RENTAL HOUSING (RRH) LOAN

The following information is to be submitted with SF 424.2 (for preapplication submission):

I. *Eligibility.*

A. Financial Statements—Each applicant must submit a current, signed and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site or a combination of both as an equity contribution. The initial operating capital requirement may be fulfilled by contributing cash or by providing an irrevocable letter of credit.

(1) For a corporation (other than a nonprofit corporation) or a trust, financial statements will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent.

(2) For a partnership, financial statements will be required from each general partner who holds an interest in the organization.

(3) For limited partners in a limited partnership who will have 10 percent or more ownership, a certificate of net worth will be required.

(4) For applicants that are not legally organized at the time of filing the preapplication, financial statements will be required from all of the proposed parties in proportion to the proposed ownership interest of each part. However, the applicant must be legally organized prior to loan approval and must submit financial statements.

(5) For cases in which financial statements are required from an individual, the financial statements must also include the financial interest and signature of the spouse.

(6) When the applicant and/or general partner(s) have multiple applications pending and/or when the State Director is uncertain of the applicant's ability to provide the necessary 3 percent borrower contribution, 2 percent initial capital contribution and/or other assets needed for a sound loan, the State Director may request the applicant to submit additional financial information relative to its financial position. This information may be obtained from 6- to 12-month projected pro forma statements with supporting schedules.

(7) All financial statements or net worth certifications submitted must contain the following statement immediately preceding the signature line:

(A) In new projects in which the loan has not been closed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan preapplication or application of which this statement is a part.

(B) For projects in which the loan has been closed and the applicant has been formed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of enabling the United States of America to make a determination of continued eligibility of the borrower organization for a loan as requested in the application of which this statement is a part.

B. Evidence Concerning the Test for Other Credit—Applicants other than States or local public agencies must show that other credit is not available at rates and terms that will enable the units to be rented to eligible tenants at rates within their payment ability. The applicant should provide letters from local real estate lenders stating the amount of loan funds they would be willing to extend and the rates and terms at which the loans would be available.

C. Statement of applicant's experience in operating rental housing and related business, including a statement on the proposed method of operation and management.

D. For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to be organized; a certified copy of the applicant's actual, or a copy of the applicant's proposed charter, articles of incorporation, bylaws, partnership agreement, certification of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors and officers; and, if a member of a subsidiary of another organization, its name, address, and principal business, if available.

E. FmHA requires that applicants disclose identities of interests that will exist related to the development of the proposed housing. A written, dated, and signed statement from the applicant stating the following:

(I) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider an identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) When there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder or partner of the party of the second part; (3) when any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services or interim financing other than those of a survey, general superintendent or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending or canceling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interim lender, subcontractors, material suppliers, equipment lessors or any of their members, directors, officers, stockholders, partners or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part.

F. The social security or tax identification number will be required in all cases. The loan will be denied for refusal to furnish the required social security or tax identification number.

(1) In the case of an individual, the social security number of the applicant must be provided. The spouse's social security number must also be provided when they have joint responsibility for the loan.

(2) In the case of a partnership, the tax identification number of the partnership must be provided if available and also the social security numbers of all the general partners and their spouses.

(3) In the case of a limited partnership, the tax identification number of the limited partnership is required. The social security number of all the general partners and their spouses should be secured if possible.

(4) In the case of a company, corporation or nonprofit organization, the tax identification number of the organization is required. The social security number of the officers should be secured if possible.

(5) If an organization does not have a tax identification number, the social security number of one of the officers must be used.

G. All known principals and affiliates are required to submit a properly completed Form HUD 2530/FmHA 1944-37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The form will be completed and processed according to the instructions attached to the form.

II. *Need and demand.*

A. Economic justification and project size should be based on the housing need and demand from eligible prospective tenants who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) should be discounted in determining need and project size.

B. For projects of 20 units or more, a detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories or chambers of commerce is required. The study should include:

(1) A complete description of the proposed site, including at least the location with respect to city boundary lines and residential developments and the location of services and their distances from the site.

(2) Major employment data to portray the names of major employers within the community and/or market area, the product or service of each employer, the number of employees at each employer, the location of each employer within the community and/or market area, and the year the employer was established at the location. If certain income data cannot be obtained from individual employers, salary information for the community can be provided by the state employment commission.

(3) Population by year, number, total increase/decrease, percentage, annual increase/decrease and percentage.

(4) Population characteristics by age.

(5) The household data by number, year and number of persons per household.

(6) A breakdown of households by owners and renters.

(7) Households by income group.

(8) Building permits issued by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may have to be substituted with number of requests for electric service connections, number of water/sewer hookups, etc., obtained from local suppliers.

(9) Housing stock as defined by total number of units, one unit buildings, two or more unit buildings, mobile homes and number lacking some or all plumbing facilities.

(10) A survey of existing rental housing by name, number of units, bedroom mix, family or elderly type, year built, rent, vacancies, location and amenities.

(11) A projection of housing demand based on household growth, units constructed since last census, number of owned and rented units, number of replacements and the number of persons in the eligible income range.

C. Exhibit A-7 is a guide to be used in preparing professional market studies which provides more specifics as to study content. The qualifications of the person preparing the market study should include some housing or demographic experience.

D. A table of contents, the analyst's statement of qualifications, and certification of accuracy of study should be placed at the beginning of the study. The context of the study must be in clear, understandable language—not written to confuse or to camouflage. All mathematical calculations must be expressed in actual numbers and may also be accompanied by percentages. Each table and/or section should identify the *source* of the data. A brief statement of the methodology used in the study should be included in the foreward and in other sections where necessary for clarity.

E. The market analyst must affirm that he/she will receive no fees which are contingent upon approval of the project by FmHA, before or after the fact, and that he/she will have no interest in the housing project. A study prepared by an analyst with an identity of interest with the developer will need to fully disclose the nature of the identity.

F. For projects of less than 20 units, the need for the housing may be established by obtaining signed expressions of interest from 50 percent more eligible prospective tenants than the number of proposed units. Exhibits A-3 and A-4 or similar forms may be used for this analysis. Statements evidencing a continued need for the units must be included in the analysis of market. These statements should be based on historical population growth taken from census reports or a current housing evaluation by the county. If this type of analysis does not adequately support the need for housing in a questionable market area, FmHA will request that a full market study be prepared. The applicant will provide a written, signed certification that the survey was performed in a manner acceptable to FmHA and that the results are a true portrayal of the survey.

G. In the case of a proposal involving congregate housing with central dining area or housing involving a group living arrangement, a narrative statement from local, State and/or Federal Government agencies supporting the current and long-range need for the facilities in the community and its trade area is required.

H. A schedule of proposed rental rates and, in the case of a congregate housing proposal, a separate schedule listing the proposed cost of any nonshelter service to be provided should be included with the market information.

III. *Site.*

A. Size of tract and a plot map identifying its boundaries.

B. A map showing the location and other supporting information on the neighborhood and existing facilities, such as distance to shopping areas, churches, schools, available transportation, drainage, santitation facilities, water supply and access to essential services such as doctors, dentists, pharmacies and hospitals. The map should also show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site should also be indicated.

C. The applicant should provide evidence of having control of the proposed site either by ownership or by executing an option to buy.

IV. General description of the housing planned. A brief narrative description of the housing planned should include the following items:

A. The type of project and structures proposed, such as garden apartments for elderly and handicapped persons; townhouses for low- and moderate-income persons; or congregate housing for senior citizens and handicapped persons.

B. The size of each type of rental unit measured in square feet of living area.

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc.

D. The total number of units and the number of each type of unit proposed.

E. The type of construction proposed and the method of construction, i.e., owner/builder, negotiated bid or public bid.

F. The estimated total development cost, the cost per unit and the estimated loan amount.

G. Type of utilities such as water, sewer, gas and electricity and whether each is publicly, community or individually owned.

H. The comments and recommendations of any professional consultants regarding on- or off-site conditions that could affect the proposed project should be submitted, if available. Any comments addressing an adverse condition should include recommended corrective actions. Any special regulation waivers or variances that may be necessary should also be identified.

I. Schematic design drawings should be included with the narrative description and contain, as a minimum:

(1) Site plan, including significant ground contour lines.

(2) Floor plans of each living unit type and other type spaces.

(3) Building exterior elevations.

(4) Typical building exterior wall section.

J. A plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys and adjacent structures and their uses. It should also show proposed off-street parking for the tenants and their visitors. Other facilities, such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

V. The applicant must submit a signed statement agreeing to pay cost overruns from its own resources.

VI. For preapplications that will be submitted to the National Office for concurrence, Form FmHA 1940-20, "Request for Environmental Information."

VII. *Intergovernmental consultation.* Comments must be submitted in accordance with 7 CFR, Part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J (available in any FmHA office).

VIII. *Disclosures by Applicants.*

(A) Applicants will submit information regarding any other government assistance as defined in § 1944.205 of this subpart from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project for which the applicant is seeking.

(B) The applicant will submit the names of any interested parties as defined in § 1944.205 of this subpart.

(C) The applicant will also submit a report detailing the expected sources and uses of funds that are to be made available for the project.

(D) The disclosures required in paragraphs (A)-(C) will be updated within 30 days of any substantial change during the period of the application process.

IX. For congregate housing proposals. Applicants must submit information on the services to be provided in accordance with exhibit E of this subpart.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7492, Mar. 9, 1988; 53 FR 36268, Sept. 19, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 13503, Apr. 11, 1990; 55 FR 26647, June 29, 1990; 55 FR 29558 and 29562, July 20, 1990]

EXHIBIT A-7—OUTLINE OF PROFESSIONAL MARKET STUDY

This outline is to be used by analysts as the basis for preparing market studies for the 515 housing program. It generally contains the type of depth of information which FmHA requires for evaluating the feasibility of prospective housing developments. In addition to these specifications, the analyst will be responsible for including data pertinent to the elderly population if the proposed design is for elderly housing.

The guidelines provide for the demonstration of historical trends and allows the analyst to project into the two years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline.

If you have not previously participated in this program, you will have to obtain approval from FmHA before your study is accepted. To do this, a sample of a prior market analysis which you have prepared will need to be submitted to the local FmHA office for review. If this is to be your first market study, you will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

I. *Market area—General.*

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Any deviation from this definition must be coordinated with the district office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1970, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,829 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1980, the (Name) market area population of 7,603 represented 6.7 percent of the county population of 113,086. (See Table 4 and Map 2 in Section II for details.)

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II. *Site.*

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings.

B. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office and town hall. Other shopping is available .2 mile south at (Town) Plaza.

C. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large City) and (City).

D. All public services are available at the site.

III. *Demographic characteristics.*

A. *Economic profile.*

1. *Labor force and employment trends* presents trends between 1970 and 1980, provides current year estimates and projected changes at the county level.

CIVILIAN LABOR FORCE AND EMPLOYMENT TRENDS AND FORECASTS, COUNTY, 1970–1987

	1970	1980	198–[1]	19—
Civilian Labor Force:[2]				
Unemployment				
Rate of Unemployment				
Employment				

[1] Preliminary—based on monthly data through ——.
[2] Data based on place of residents.
Source:

CHANGE IN TOTAL EMPLOYMENT

Number	Percent			
	Total	Annual	Total	Annual
1970–1980				
1980–198				
198 –19 (2-year projection)				

2. *Employment data.* In order to determine how employment affects the market area, it will be necessary to show the number of employed persons between 1980 and the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example:

Year	County		
	Number	Change	Unemployment (percent)
1980			
1981			
1982			
1983			
1984			
1985			
1986			
1987 (or through current year)			

Source:

3. *Major employers.* This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, number of employees at each employer, salary range of each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also helpful to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there have been any significant recent changes in number of employees.

4. It should not be difficult to obtain some of the above data from the employers themselves. However, some employers may be reluctant to divulge certain information regarding their businesses, such as the salary range of their employees. In those cases, the analyst will have to obtain averages, by job type, from the State Employment Commission using job classifications from the Standard Industrial Classification Manual. The data should be shown as follows:

Example:

Employer	Product/Service	Employees	Salary		Location	Year established
			Weekly	Yearly		
Washington Aircraft	Crop dusting	5	$200	$10,000	Town	19

SOURCE:

B. *Demographic Profile.*

1. *Population.* The analyst will need to show population changes between 1970 and 1980, the current year estimate and projected change. The annual changes will need to be shown also. We also want percentages along with the figures, as follows:

	Year [1]	Number	Total change	Percent	Annual change	Percent
Town:	1970					
	1980					
	198 (current estimate)					
Projected:	19 (2 years)					
County:	1970					
	1980					
	198 (current estimate)					
Projected:	19 (2 years)					

[1] April 1 of each year.

2. *Age Characteristics.*

Age	Town, 1970-80 [1]			County, 1970-80		
	1970	1980	Change	1970	1980	Change
Under 18						
18-29						
30-61						
62+						

[1] Available for places of 2,500 or more only.

3. *Households.* A breakdown by town and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

Year [1]	Population	In group quarters	Households	Persons per household
Town:				
1970				
1980				
198				
Projected: 19 (2 years)				
County:				
1970				
1980				
198				
Projected: 19 (2 years)				

[1] April 1 of each year.

4. *Households by Tenure.* This section is one of the more important aspects of the market analysis. This information will enable us to more closely pinpoint the number of households which would comprise the target group of our evaluation.

Year	Total households	Owner	Percent	Renter	Percent
Town:					
1970					
1980					
198					
Estimate: 198					
Projected: 19 (2 years)					
County:					
1970					
1980					
Estimate: 198					
Projected: 19 (2 years)					

5. *Households by Income Group.* This section is also vital to the evaluation of the market because of the low income ranges which exist in the rural areas and the lack of deep subsidy. For this reason, close attention must be paid to the number of persons whose incomes will allow them to pay the rent plus utilities and still remain within the 30 percent criterion. In some cases, persons with incomes in the upper range of the eligible income group have displayed a lack of interest since they would be required to pay the full market rent. Also persons with lower incomes will move into projects even though they will pay more than 30 percent of their incomes. Irrespective of these considerations, the study will need to show the entire scale of incomes from lowest to highest. The number of renters who fall within the feasibility range can then be estimated. Income data should be shown for total and renter households, updated to the current year.

a. Rent for a 1-bedroom apartment is $250 with a $30 utility allowance (which can include electric or gas heat, air conditioning, lighting, cooking, water heating and trash collection, water, sewer). The amount of income needed to pay the total bill and stay within 30 percent of income would be:

EXAMPLE:

$280 divided by .30 × 12 = $11,088 income.

Household Income Profile, —— County, 1984 [1]

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[1] Income information may also be obtained from Sales and Marketing Management Magazine and used in conjunction with the HUD data.

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than $10,000				
$10,000 to $14,999				
$15,000 to $19,999				
$20,000 to $24,999				
$25,000 to				
Total				
Median				

SOURCE:

b. HUD has furnished its information on owner/renter by income group by number of persons in the household. This type of information will further enhance evaluation of the affordability issue by allowing the examination of the number of renters in the affordability range. For the present time, the analyst should make a request for this data through the District Office.

C. *Housing supply profile.*

1. *Building permits issued.* The Housing Units Authorized by Building Permits and Public Contracts (C-40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually.

EXAMPLE:

Year	Town			County		
	Single family	Multi-Family	Total	Single family	Multi-Family	Total
1980						
1981						
1982						
1983						
Through current year						

2. *Housing stock.* The study must include the number of units within the county and town (where available), both single family type and multi-family, along with the number of substandard units and the quantity of mobile homes, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

EXAMPLE:

Inventory change profile	Town	Coun
1970 Stock		
1980 Stock		
Change:		
Number:		
Total		
Annual		
Percent		

Plumbing Facilities [1]
Complete—Exclusive Use
Lacking Complete Facilities
Number of Units [1]
1
2-9
10 or more
Mobile Home

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. The rent levels, number of bedrooms, type of project, age, vacancy rate, location and amenities available will have to be compared. This will enable FmHA to judge how many of the existing units: (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey should include both subsidized and nonsubsidized rentals and have photographs as backup. The survey should include the description in Exhibit A-2 of this subpart. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general.

IV. *Housing Demand Forecasts.*

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[1] Data available for incorporated places of 2,500 or more only.

A. The analyst must give a projection of the housing needs for a specified forecast period. The information may be presented in chart form in other formats with other types of information but should include the following as a minimum:

Sources of demand	Town		County	
	Owner	Renter	Owner	Renter
New households				
Plus replacements				
Plus vacancy (of 5%)				
Total demand				

B. The demand forecast should be adjusted for rental units already provided (if any) within the market area. The residual demand represents the market from which the proposed project will attract tenants.

EXHIBIT A-8—INFORMATION TO BE SUBMITTED WITH APPLICATION FOR A RURAL RENTAL HOUSING (RRH) LOAN

The following information is to be submitted with SF 424.2 (for application submission):

1. Drawings and specifications, including any cost containment considerations and special design features for elderly or handicapped persons.

2. A detailed cost breakdown of the project for such items as land and rights-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, the proposed contractor if a construction contract is to be negotiated, and the architectural, engineering and legal services included in the proposal.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances or regulations. This could be an indication of approval to proceed with the development of the project rather than final approval of plans and specifications.

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require an updated one if he/she determines it necessary.

6. For all projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with § 1901.203 of Subpart E to Part 1901 of this chapter. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

7. If more than 90 days have transpired since the applicant submitted the dated financial statement, the State Director may require a new one if he/she determines it necessary.

8. If there is any change in related assistance available to the applicant from other government agencies or in the interested parties as defined in § 1944.205 of this subpart, it must be disclosed at this time.

9. Detailed operating budgets showing a schedule of proposed rental rates for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments and permit accumulation of required reserves. Form FmHA 1930-7, "Statement of Budget and Cash Flow," and Exhibit A-5 of this subpart (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent and contingency expenses. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of 1 percent per annum of the amount of the loan until a minimum reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the reserve account is to provide funds for this purpose.

c. All applicable taxes, including Federal and State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c) (4) of the Internal Revenue Code.

10. A description and justification of any related facilities to be financed wholly or in part with loan funds.

11. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent, a copy of the proposed management agreement should be submitted. It must contain the clause stating that it is not in full force and effect until approved by FmHA.

12. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project in accordance with the requirements of paragraph V of Exhibit B of Subpart C to Part 1930 of this chapter. Copies of the proposed application for occupancy, sample waiting lists, lease or rental agreement, and rules and regulations governing administration, occupancy and pet policies should be included. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of Subpart C to Part 1930 of this chapter.

13. A schedule of any separate charges for the use of any related facilities and, in the case of congregate housing, a schedule of any separate charges for nonshelter services (such as meals, personal care and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

14. A satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

15. Form FmHA 1940-20, "Request For Environmental Information."

16. Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 36268, Sept. 19, 1988; 54 FR 29332, July 12, 1989; 55 FR 13503, Apr. 11, 1990; 55 FR 29563, July 20, 1990]

Exhibit A-9—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance With Low-Income Housing Tax Credits

I. The State Agency is required under section 42 of the U.S. Internal Revenue Code to select projects to receive low income housing tax credits from among applications according to tax credit allocation plans developed by the State Agencies. Each application submitted to the State Agency is to be evaluated to determine the amount of credit necessary to make the proposal financially feasible and viable. When making this evaluation, the State Agency is required to consider the "sources and uses" of funds and the total financing planned for the project as well as the proceeds expected to be generated by reason of tax benefits.

A. FmHA will review preapplications from applicant/entities seeking FmHA assistance when those applicant/entities submit Form SF 424.2, "Application for Federal Assistance for Construction," and required supporting material. When a preapplication is determined by FmHA to be eligible, feasible, and has sufficient points to be funded, such information is conveyed to the applicant by way of an AD-622 "Notice of Preapplication Review Action". The State Agency will also be sent a copy of the Form AD-622 by FmHA and a copy of the financial assistance package on which FmHA based its preliminary determination regarding funding. It is, however, the responsibility of the applicant/entity to apply to their respective State agencies for a tax credit allocation. Likewise, when a preapplication is determined by FmHA to be eligible and feasible but lacks sufficient priority points, or if a preapplication is rejected by FmHA, the applicant(s) and the State Agency will only receive a copy of the Form AD-622, in accordance with § 1944.231(a)(9)(i) of this subpart.

1. Under the State allocation plan criteria, only projects receiving a favorable review, which reflect they are likely to be funded in the current fiscal year, will be eligible to apply to the State agency for low income tax credit allocations. It is the responsibility of the applicant to provide the State Agency with any additional information or clarification of funding sources as may be necessary. The State Agency will then evaluate the applicant/entity's request for a tax credit allocation using the Form AD-622 and any attachments. When the evaluation is completed, a copy of the tax credit reservation will be transmitted to FmHA by the State Agency.

2. After FmHA finalizes its processing of Form SF 424.2 and related materials constituting a full application, FmHA will submit

to the State Agency a copy of Form 1944-51, "Multiple Family Housing Obligation-Fund Analysis," as well as a copy of the updated financial assistance package, on the same date it is delivered to the applicant/entity. It is the applicant's responsibility to follow-up with the State agency once the form 1944-51 has been issued.

3. The State Agency will then be ready to evaluate the project based on any changes in funding sources and amounts resulting from the FmHA obligation. A formal tax credit commitment is made by the State Agency at this time and a copy of the tax credit commitment notice will be sent to FmHA by the State Agency. Since the loan obligation and the tax credit commitment are likely to occur in one calendar year and the final loan closing and the tax credit allocation in a later calendar year, the State Agency will award a carryover commitment to the project. A carryover commitment provides that the project must be placed in service by the end of the second calendar year following the year in which the carryover is awarded.

B. At loan closing the FmHA will send the final terms of the funding level to the State Agency. The State Agency will make a final tax credit award calculation based upon any changes in the FmHA funding levels which may have taken place between obligation and closing. The State Agency will allocate the tax credits based on documentation received either at loan closing or immediately after loan closing. A duly executed "Low-Income Housing Credit Allocation Certification", Form 8609 (Department of The Treasury, Internal Revenue Service) will be transmitted to FmHA by the State Agency. The Form 8609 will be retained in the project file for the life of the loan, along with supporting final documentation on the sources and uses of funds upon which the Low Income Housing Tax Credit Allocation was made.

II. In evaluating projects to determine tax credit awards, the State Agency may rely upon the debt terms and loan amounts determined by FmHA. If FmHA also applies rental assistance to units in the projects, the State Agency may rely on FmHA's judgment and determination that such assistance is necessary.

III. The State Agency and FmHA will transmit the appropriate documentation to each other within 7 working days of each event. Facsimile transmissions are permissible and appropriate. Materials transmitted and correspondence received will be retained by FmHA as part of the permanent project file.

IV. The Form 8609 will be issued by the State Agency in accordance to legal requirements that the amount of low income tax credit in concert with other assistance is not more than is necessary to provide affordable housing.

V. The FmHA State Director will make a certification by memorandum to the FmHA Administrator that the assistance provided to the project is not more than is necessary to make the project affordable. This certification will be based on FmHA processing and the State Agency's certification, via Form 8609. The State Director's Certification Memorandum and State Agency certification will be filed in the FmHA loan docket with loan security instruments and kept as a permanent part of the loan file for the life of the loan.

[55 FR 29563, July 20, 1990]

EXHIBIT B—GUIDE LETTER FOR USE IN INFORMING INTERIM LENDER OF FMHA'S COMMITMENT

(Name and Address of Private Lender)

____

____

Dear Mr./Ms.: ____________________

(For Organizations)

Reference is made to a request from the
(Smith Housing Assoc.)

____

through
(John Smith),

____

its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request for
(John Jones)

____

for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final drawings, specifications and all other contract documents have been prepared and approved, and the applicant is prepared to start construction. The applicant and FmHA have determined that the conditions of loan closing can be met. Funds have been obligated for the project.

FmHA has required the applicant to deposit $______ with your firm to be used before any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates proposed by the builder and approved for payment by the consulting architect, applicant and FmHA District Director.

We have scheduled the FmHA loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved (contract documents), drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents] [1] and drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of the construction contract] [1] based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least three or four joint inspections at critical points during construction, including the final inspection, can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. If the contractor defaults, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements if a new contractor can complete the project for a total cost within the security value of the project. If this is not possible or if the FmHA loan applicant becomes unable or unwilling to continue with the project, FmHA will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements) to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. When justified, FmHA may make subsequent loans when necessary to help cover the eligible costs, provided additional loan funds are available, the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director

EXHIBIT C—ARTICLES OF INCORPORATION

(NOT FOR PROFIT)

(SAMPLE)

We, the undersigned, incorporators hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of ______.

First: The name of the corporation is __________.

Second: The location of its principal place of business in this State is ______ ________, ________ County.

Third: The location of its registered office in the State is ________, ______ ________ County.

Fourth: The name and address of its resident agent in this State is ______ ________, ________ County. ________.

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[1] These words may be omitted for projects constructed by the owner-builder method of construction with a construction contract.

Fifth: This corporation is organized not for profit under ______ and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose: to acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by FmHA regulations, without regard to race, color, religion, sex, handicap, marital or familial status, age or National origin.

Sixth: The number of directors shall be prescribed in the bylaws, but shall not be less than five.

Seventh: The corporation formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due shall be used to make advance payments on a ______ owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators

______

______

Directors

______

______

Tenth: In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purposes to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Eleventh: The duration of the existence of this corporation shall be perpetual.[1]

In Testimony Whereof, We have hereunto subscribed our names on ______, 19__

______

______

______

(Insert acknowledgment or other form if required by State law.)

[53 FR 2159, Jan. 26, 1988, as amended at 55 FR 6246, Feb. 22, 1990]

EXHIBIT D—BYLAWS

(Sample)

Bylaws of

A NONPROFIT CORPORATION

Article I

Office

Section 1.01. *Principal Office.*

The principal office of the corporation in the State of ______, shall be located at ______, County of ______ Section 1.02. Registered Office and Agent. The corporation shall have and continuously maintain in the State of ______ a registered office and a registered agent whose office is identical with such registered office.

Article II

Members

Section 2.01. *Eligibility for membership.*

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the town of ______ or in the surrounding trade area, applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. *Approval of Applications.*

All applications for membership shall be approved at: (1) Any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the existing membership present at any annual or special meeting held in accordance with Article III herein.

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[1] Duration should be perpetual, or long enough to cover the period of the loan plus 5 years, or for the longest period permitted by the State law.

Section 2.03. *Voting Rights.*

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. *Termination of Membership.*

A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who becomes ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. *Resignation.*

Any member may resign by filing a written resignation with the secretary.

Section 2.06. *Reinstatement.*

Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. *Transfer of Membership.*

Membership in this corporation is not transferable or assignable.

Section 2.08. *Membership—Fees.*

The membership fee shall be $______ or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain membership before paying the treasurer the membership fee.

Section 2.09. *Membership—Liability for Corporation's Obligations.*

Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. *Membership—Minimum Number.*

The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.

Section 2.11. *Membership—Residence.*

A majority of the members shall be residents of the community where the housing is or will be located.

Article III

Meetings of Members.

Section 3.01. *Annual Meeting.*

An annual meeting of the members shall be held at ______, on the ______ of the month of ______ each year, beginning with the year 19____, at the hour of ______ o'clock, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. *Special Meetings.*

Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03 *Place of Meeting.*

The board of directors may designate any place within or not more than ____ miles from ______ as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. *Notice of Meetings.*

Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. *Informal Action by Members.*

Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. *Quorum.*

At such meeting, a quorum shall consist of 30 percent of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. *Proxies.*

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be canceled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day of such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

Board of Directors

Section 4.01. *General Powers.*

The affairs of the corporation shall be managed by its board of directors.

Section 4.02. *Number, Tenure, and Qualifications.*

The number of directors shall be ____. The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number of directors, at least five must be among the leaders in such community.

Section 4.03. *Regular Meetings.*

A regular annual meeting of the board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the members. The board may provide by resolution the time and place, within or not more than ____ miles from ______ for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. *Special Meetings.*

Special meetings of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than ____ miles from ______ as the place for holding such meeting.

Section 4.05. *Notice.*

Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the director's address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. *Quorum.*

A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.07. *Manner of Acting.*

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. *Vacancies.*

Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. *Compensation.*

Directors shall not receive any compensation for their services as directors.

Section 4.10. *Director—Absence From Meetings.*

Any director who is absent from ____ consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. *Directors—Residuary Powers.*

The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except those specifically granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested to the board.

Section 4.12. *Directors—Removal From Office.*

A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V

Officers

Section 5.01. *Officers.*

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. *Election and Term of Office.*

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. *Removal.*

Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. *Vacancies.*

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. *President.*

The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of these bylaws or statutes to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. *Vice President.*

In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. *Treasurer.*

The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or the board.

Section 5.08. *Secretary.*

The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI

Order of Business

Section 6.01. *Order of Business.*

The order of business at any regular or special meeting of the members or the board shall be:

(a) Reading and approval of any unapproved minutes.

(b) Reports of officers and committees.

(c) Unfinished business.

(d) New business.

(e) Adjournment.

Section 6.02. *Parliamentary Procedure.*

On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

Committee

Section 7.01. *Committees of Directors.*

The board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board, or any individual director, by law.

Section 7.02. *Other committees.*

Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the member thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of the corporation shall be served by such removal.

Section 7.03. *Term of Office.*

Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member to be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. *Chairman.*

One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. *Vacancies.*

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. *Quorum.*

Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.*

Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

Contracts, Checks, Deposits, and Funds

Section 8.01. *Contracts.*

The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.02. *Checks, Drafts, etc.*

All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the corporation shall be signed by the officer or officers, agent or agents of the corporation, and in a manner as shall from time to time be determined by resolution of the board. In the absence of determination by the board, these instruments shall be signed by the treasurer and countersigned by the president of the corporation.

Section 8.03. *Deposits.*

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. *Gifts.*

The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the corporation.

Article IX

Certificates of Membership

Section 9.01. *Certificates of Membership.* The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, mutilated or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. *Issuance of Certificates.* When a member has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to the member by the secretary.

Article X

Books and Records

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the corporation may be inspected by any member, or member's agent or attorney, for any proper purposes at any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI

Fiscal Year

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII

Seal

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII

Waiver of Notice

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

Repeal or Amendment of Bylaws

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: provided, however, no such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without any express assent of rights, privileges, or immunities then existing. Notice of any amendment to be offered at any meeting shall be given not less than 7 nor more than 30 days before such meeting and shall set forth such amendment.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the ______ day of ______, 19____ at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

____

Secretary

(Corporate Seal)

Exhibit E—Support Services for Congregate Housing and Group Homes

I. Purpose

This exhibit prescribes support services for congregate housing and group homes.

II. General

The success of congregate housing and group homes will depend on the quality and affordability of the service component. Congregate housing applicants should explore the feasibility of providing services individually to ensure affordability by very low-income tenants. If feasible, fully independent tenants who do not require services to live independently should be given the option of choosing the services they want and can afford.

III. Existing Community Services and Requirements

Applicants should check local service agencies to determine what services are already available in the community. Services can often be provided more inexpensively through local service agencies or other groups which assist in providing services. In many communities there are established volunteer groups that may be willing to provide volunteer assistance to congregate housing tenants. Volunteer groups with a history of assisting elderly people may be able to supplement the delivery of services and help keep the costs affordable. Applicants should explore the availability of volunteers from the Retired Senior Volunteer Program (RSVP), local church groups and other community organizations. If volunteer groups are used, an alternative method of service delivery must be addressed in case the availability of volunteers ceases in the future. Applicants must also verify State and local licensing and certification requirements and include relevant information in the preapplication.

IV. Service Agreements

Applicant must submit a service agreement(s) for services that will not be provided by employees of the project. If services will be provided by employees of the project, the applicant must submit a separate budget for services and describe how tenants will be billed for services. Employees of congregate housing facilities who perform tasks for the management of the building and spend an appreciable amount of time in providing services to tenants should have their salaries prorated between the project's operation and maintenance budget and the services budget.

V. Services for Congregate Housing

The following services must be made available to tenants of congregate housing projects:

A. *Meals.* At least one nutritious meal a day, 7 days a week, must be provided in accordance with § 1944.224(a)(5)(i) of this subpart. The following information concerning the meal service must be included with the preapplication.

1. Who will provide the meals (i.e., meals offered by a local agency with tenant contribution; supplied or contracted for by owner with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the meal service. The breakdown should include the cost of food, personnel and utilities needed to prepare and serve the meals. Information concerning the proposed staffing should be included.

3. The cost to the tenant. Will tenants pay by the meal or be charged a rate for a specified time?

4. A statement concerning the frequency of meals, including the number of meals to be served per week.

5. Information concerning how the meals will be served (i.e., waiter style, buffet, tray service).

6. Any licensing requirement necessary for the service.

B. *Transportation.* Adequate transportation must be provided to shopping, medical and other services to meet the needs of the tenants. Applicants are encouraged to locate congregate housing facilities so that tenants can use public services. In many cases, service is available and the applicant can arrange for the project to be included in the schedule established by the provider. The following information concerning the transportation service must be included with the preapplication:

1. Who will provide the service (i.e., transportation provided by a local agency with tenant contribution; vehicle leased or purchased by applicant with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the transportation service. The applicant should address the following costs: vehicle purchase or lease payment; personnel to operate the vehicle; fuel; maintenance; and insurance.

3. The cost to the tenant. Will tenants pay for each trip or will they be charged a monthly rate?

4. A typical proposed schedule.

C. *Housekeeping.* Housekeeping services must be offered to assist congregate tenants with household tasks. The applicant must address the following concerning the housekeeping service:

1. Who will provide the service (i.e., housekeeping offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be offered (i.e., light housekeeping, laundry, shampooing carpeting). What is the planned frequency of the tasks?

4. The cost to the tenant.

D. *Personal services.* Personal services include such items as assistance with personal hygiene, nutrition counseling and general health screening (blood pressure checks, etc.). The following information concerning the personal services must be submitted with the preapplication:

1. Who will provide the service (i.e., personal services offered by a local agency with tenant contribution; volunteer health serv-

ices; contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be provided.

4. The cost to the tenant.

5. Any licensing requirement necessary for the services.

E. *Recreational/social.* Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. The following areas could be considered: hobby and craft classes; dinners for holidays, birthdays, etc.; educational lectures; wellness and exercise programs; and a library. The applicant should encourage recreational/social activities which cause interaction between tenants, the project and the community. The following information concerning the recreational/social service must be included with the preapplication:

1. Who will provide the service (i.e., recreational/social activities offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to the tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown which includes the cost of labor and supplies.

3. The types and frequency of recreational/social activities that will be offered.

4. The cost to the tenant.

VI. Services for Group Homes

The following services must be made available to tenants of a group home:

A. *Meals.* At least three nutritious meals a day, 7 days a week, must be provided if tenants are not capable of preparing their meals. If meals are provided, the budget may include only the cost of food if tenants assist a staff person in preparing meals. Tenants in some group homes may be able to prepare meals on their own with supervision from a project personnel. In these cases, applicants must ensure that the tenants will be preparing nutritious meals.

B. *Transportation.* Applicants must submit information on the transportation service as detailed in paragraph V B of this Exhibit.

C. *Housekeeping.* Applicants must provide a narrative explaining how housekeeping will be accomplished. In many cases, group home tenants assist with housekeeping chores with little expense being borne by the project. Applicants should detail expenses that will be part of the service budget.

D. *Personal services.* A higher percentage of tenants in a group home may require personal services. Applicants must detail the services to be offered and the cost to tenants.

E. *Recreational/social.* In most cases, there will be little expense for recreational/social opportunities in a group home. Applicants should explain what will be offered to the tenants and the projected cost to tenants.

VII. Additional Items Necessary for Congregate Housing/Group Homes That Cannot be Financed with FmHA Loan Funds

Congregate housing/group home projects require additional items that will not become affixed to the real estate. These items can include special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, steamtables, etc. In accordance with § 1944.224(a)(3) of this subpart, loan funds cannot be used to finance these items. As a part of the preapplication, applicants must include a proposed list of additional items that will be needed by the project and state how these items will be paid for.

[55 FR 26647, June 29, 1990]

Subparts F–H—[Reserved]

Subpart I—Self-Help Technical Assistance Grants

SOURCE: 55 FR 41833, Oct. 16, 1990, unless otherwise noted.

§ 1944.401 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Technical Assistance (TA) funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under section 523 of the Housing Act of 1949. This financial assistance may pay part or all of the cost of developing, administering, or coordinating programs of technical and supervisory assistance to aid needy very low- and low-income families in carrying out self-help housing efforts in rural areas. Very low-income families must receive a priority for recruitment and participation and may not comprise less than the percentage stated in subpart L of part 1940 of this chapter of those assisted in any grant. The primary purpose is to fund organizations that are willing to locate and work with families that otherwise do not qualify as homeowners. Generally, these are families below 50 percent of median incomes, living in substandard housing, and/or lacking the skills to be good homeowners. Grantees will comply with the nondiscrimination regulation subpart E of part 1901 of this chapter which states that no person in the United States shall, on the grounds of race, color, national origin, sex, religion, marital status, mental or physical handicap, or age, be excluded from participating in, be denied the benefits of, or be subject to discrimination in connection with the use of grant funds and all provisions of the Fair Housing Act of 1988.

§ 1944.402 Grant purposes.

Farmers Home Administration (FmHA) may contract or make a grant to an organization to:

(a) Give technical and supervisory assistance to eligible very low- and low-income families as defined in Exhibit C of subpart A of this part, in carrying out self-help housing efforts.

(b) Assist other organizations to provide technical and supervisory assistance to eligible families.

(c) Develop a final application, recruit families and related activities necessary to participate under paragraph (a) of this section.

§ 1944.403 Definitions.

(a) *Agreement.* The Self-Help Technical Assistance Agreement, which is a document signed by FmHA and the grantee, sets forth the terms and conditions under which TA funds will be made available. (Exhibit A of this subpart).

(b) *Agreement period (or grant period).* The period of time for which an agreement is in force. Generally, the period will not exceed 24 months.

(c) *Date of completion.* The date when all work under a grant is completed or the date in the TA grant agreement, or any supplement or amendment to it, when Federal assistance ends.

(d) *Direct costs.* Those costs that are specifically identified with a particular project or activity. Grantees receiving funds from a single grant source would consider all costs as direct costs.

(e) *Disallowed costs.* Those charges to a grant which FmHA determines cannot be authorized.

(f) *Equivalent units.* Equivalent units represent the "theoretical number of units" arrived at by adding the equivalent percentage of completion figure for each family in the self-help program (pre-construction and actual construction) together at any given date during program operations. The sum of the percentage of completion figures for all participant families represent the total number of "theoretical units" completed at any point in time. Equivalent units are useful in measuring progress during the period of the grant and are not a measurement of actual accomplishments. The number of equivalent units for any group can never exceed the number of planned or completed houses for that group.

(g) *Equivalent value of a modest house.* The equivalent value of a modest house is the typical cost of a recent contractor-built FmHA financed home in the area plus the actual or projected costs of an acceptable site and site development. If FmHA has not financed a contractor-built house during the last twelve months, the value will be established by use of the Marshall and Swift cost handbook or a similar type of hand book. Equivalent value of a modest house is established by FmHA.

(h) *Indirect costs.* Those costs that are incurred for common or joint objectives and therefore, cannot be readily and specifically identified with a particular project or activity, e.g., self-help.

(i) *Mutual self-help.* The construction method by which participating families organized in groups generally of 4 to 10 families utilize their own labor to reduce the total construction cost of their homes. Participating families complete construction work on their homes by an exchange of labor with one another. The mutual self-help method must be used for new construction.

(j) *Organization.* (1) A State, political subdivision, or public nonprofit corporation (including Indian tribes or Tribal corporations); or

(2) A private nonprofit corporation that is owned and controlled by private persons or interests and is organized and operated for purposes other

than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members.

(k) *Participating family.* Individuals and/or their families who agree to build homes by the mutual self-help method and rehabilitate homes by the self-help method. Participants are families with very low- or low-incomes who have the ability to furnish their share of the required labor input regardless of the handicap, age, race, color, national origin, religion, family status, or sex of the head of household. The participating family must be approved for a Section 502 RH loan or similar loans from other Federal, state, and private lenders that uses income guidelines substantially similar to the Department of Housing and Urban Development before the start of construction, have sufficient time available to assist in building their own homes, and show a desire to work with other families. Each family in the group must contribute labor on each other's homes to accomplish the 65 percent of the total 100 percent of tasks listed in Exhibit B-2 of this subpart. A participating family may use a substitute to perform the labor with prior approval of the Grantee and the FmHA State Director. A substitute is only permitted when the participating family is incapacitated.

(l) *Self-help.* The construction method by which an individual family utilizes their labor to reduce the construction cost of their home without an exchange of labor between participating families. Unless otherwise authorized by the District Director, this method is only funded for repair and rehabilitation type construction.

(m) *Sponsor.* An existing entity that is willing and able to assist an applicant, with or without charge, in applying for a grant and in carrying out responsibilities under the agreement. Examples of sponsors are local rural electric cooperatives, institutions of higher education, community action agencies and other self-help grantees. Also, when available, regional technical and management assistance contractors may qualify to serve as a sponsor at no charge.

(n) *Technical assistance.* The organizing and supervising of groups of families in the construction of their own homes including:

(1) Recruiting families who are interested in sharing labor in the construction of each other's homes and assisting such families in obtaining housing loans.

(2) Conducting meetings of the families to explain the self-help program and subjects related to home ownership, such as loan payments, taxes, insurance, maintenance, and upkeep of the property.

(3) Helping families in planning and developing activities that lead to the acquisition and development of suitable building sites.

(4) Assisting families in selecting or developing house plans for homes which will meet their needs and which they can afford.

(5) Assisting families in obtaining cost estimates for construction materials and any contracting that may be required.

(6) Providing assistance in the preparation of loan applications.

(7) Providing construction supervision and training for families while they construct their homes.

(8) Providing financial supervision to individual families with section 502 Rural Housing (RH) loans which will minimize the time and effort required by FmHA in processing borrower expenditures for materials and contract services.

(9) Assisting families in solving other housing problems.

(o) *Termination of a grant.* The cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

§ 1944.404 Eligibility.

To receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.403(j) of this subpart.

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of mutual self-help or other business management or administrative ventures which indicate an ability to perform responsibility in the field of mutual self-help; or

(2) Be sponsored by an organization with background experience, and ability, which agrees in writing to help the applicant to carry out its responsibilities.

(c) Legally obligate itself to administer TA funds, provide adequate accounting of the expenditure of such funds, and comply with the Agreement and FmHA regulations.

(d) If the organization is a private nonprofit corporation, be a corporation that:

(1) Is organized under State and local laws.

(2) Is qualified under section 501(c)(3) of the Internal Revenue Code of 1986.

(3) Has as one of its purposes the production of affordable housing.

(4) Has a Board of Directors which consist of not less than five.

§ 1944.405 Authorized use of grant funds.

(a) Payment of salaries of personnel as authorized in the Agreement.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the grantee determines it to be more economical than renting. As a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations.

(c) Purchase of office supplies such as paper, pens, pencils, and trade magazines.

(d) Payment of necessary employee benefit costs including but not limited to items such as Worker's Compensation, employer's share of social security, health benefits, and a reasonable tax deferred pension plan for permanent employees.

(e) Purchase, lease, or maintenance of power or specialty tools such as a power saw, electric drill, sabre saw, ladders, and scaffolds, which are needed by the participating families. The participating families, however, are expected to provide their own hand tools such as hammers and handsaws.

(f) Payment of liability insurance and special purpose audit costs associated with self-help activites. These would be considered direct costs, even though the grantee's general liability insurance cost and the cost of audits for the organization are generally indirect costs.

(g) Payment of reasonable fees for training of grantee personnel including board members. This may include the cost of travel and per diem to attend in or out-of-State training as authorized by the board of directors and, when necessary, for the employee to do the current job. These costs are generally direct costs.

(h) Payment of services rendered by a sponsor or other organization after the grant is closed and when it is determined the sponsor can provide the necessary services which will result in an overall reduction in the cost of assistance. Typically, this will be limited to new grantees and an existing grantee for the period of time that its size or activity does not justify a full staff. A full staff is a full or part-time director, project worker, secretary-bookkeeper, and a construction supervisor. This type of cost is generally direct.

(i) Payment of certain consulting and legal costs required in the administration of the grant if such service is not available without cost. This does not include legal expenses for claims against the Federal Government. (Legal costs that may be incurred by the organization for the benefit of the participating families may be paid with prior approval of the State Director).

(j) Payments of the cost of an accountant to set up an accounting system and perform audits that may be required. Generally, these costs are indirect.

(k) Payments of reasonable expenses of board members for attending regular or special board meetings. These costs are indirect.

§ 1944.406 Prohibited use of grant funds.

(a) Hiring personnel specifically for the purpose of performing any of the construction work for participating families in the self-help projects.

(b) Buying real estate or building materials or other property of any kind for participating families.

(c) Paying any debts, expenses, or costs which should be the responsibility of the participating families in the self-help projects.

(d) Paying for training of an employee as authorized by Attachment B of OMB Circular A-122.

(e) Paying costs other than approved indirect (including salaries) that are not directly related to helping very low- and low-income families obtain housing consistent with the objectives of this program.

§ 1944.407 Limitations.

The amount of the TA grant depends on the experience and capability of the applicant and must be justified based on the number of families to be assisted. As a guide, the maximum grant amounts for any grant period will be limited to:

(a) An average TA cost equivalent per unit of no more than 15 percent of the cost of equivalent value of modest homes built in the area. (Upon request, the County Supervisor will provide the grantee the average cost of modest homes for the area); or

(b) An average TA cost per equivalent unit that does not exceed the difference between the equivalent value of modest homes in the area and the average mortgage of the participating families minus $1,000; or

(c) A TA per equivalent unit cost that does not exceed an amount established by the State Director. The State Director may authorize a greater TA cost than paragraph (a) or (b) of this section when needed to accomplish a particular objective, such as requiring the grantee to serve very low-income families, remote areas, or similar situations; or

(d) A negotiated amount for repair and rehabilitation type proposals. At a minimum, applicants applying for repair and rehabilitation grants must include information on the proximity of the houses in a project, the typical needed repairs, and the cost savings between self-help and contractor rehabilitation and repair.

§ 1944.408 [Reserved]

§ 1944.409 Executive Order 12372.

The self-help program is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under subpart J of part 1940 of this chapter (available in any FmHA office), new applicants for the self-help program must submit their Statement of Activities to the State single point of contact prior to submitting their preapplication to FmHA. The name of the point of contact is available from the FmHA State Office.

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

(a) *Form SF-424, "Application for Federal Assistance."* Form SF-424 in an original and one copy must be submitted by the applicant to the District Director. It will be used to establish communication between the applicant and FmHA, determine the applicant's eligibility, determine how well the project can compete with similar applications from other organizations and eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application. In addition, the following information will be attached to and become a part of the preapplication:

(1) Complete information about the applicant's previous experience and capacity to carry out the objective of the agreement.

(2) If the applicant organization is already formed, a copy of or an accurate reference to the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; the names and addresses of the applicant's members, directors, and officers; and

if another organization is a member of the applicant-organization, its name, address, and principal business. If the applicant is not already formed, attach copies of the proposed organizational documents demonstrating compliance with **§ 1944.404(d)** of this subpart.

(3) A current (no more than 12 months old) dated and signed financial statement showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt owed by the applicant. If the applicant is being sponsored by another organization, the same type of financial statement also must be provided by the applicant's sponsor.

(4) A narrative statement which includes information about the amount of the grant funds being requested, area(s) to be served, need for self-help housing in the area(s), the number of self-help units proposed to be built, rehabilitated or repaired during the agreement period, housing conditions of low-income families in the area and reasons why families need self-help assistance. Evidence should be provided that the communities support the activity and that there are low-income families willing to contribute their labor in order to obtain adequate housing. Evidence of community support may be letters of support from local officials, individuals and community organizations. The pre-application may contain information such as census materials, local planning studies, surveys, or other readily available information which indicates a need in the area for housing of the type and cost to be provided by the proposed self-help TA program.

(5) A plan of how the organization proposes to reach very low-income families living in houses that are deteriorated, dilapidated, overcrowded, and/or lacking plumbing facilities.

(6) A proposed budget which will be prepared on SF-424A, "Budget Information (Non-Construction Programs)" will be completed to address applicable assurances as outlined in § 3015.205 of 7 CFR part 3015. State and local Government will include an assurance that the grantee shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. The State and local governments shall also comply with 7 CFR part 3016.

(7) A preliminary survey as to the availability of lots and projected cost of the sites.

(8) A list of other activities the applicant is engaged in and expects to continue, and a statement as to other sources of funding and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the agreement. If multi-funded, its cost allocation plan or indirect cost rate must be part of the pre-application.

(9) Whether assistance under paragraph (d) of this section is requested and a brief narrative identifying the need, amount of funds needed, and projected time period.

(10) If a project is planned for five or more housing lots or units, an Affirmative Fair Marketing Plan is required. The plan will be in effect until the completion of the project.

(b) *Preapplication review.* (1) The District Director, within 30 days of receipt of the preapplication, Form SF-424, and all other required information and material will complete a thorough review for completeness, accuracy, and conformance to program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. The applicant should be given the name of the regional technical assistance contractor. The County Supervisor in the prospective county will be contacted as to the need for the program in the proposed area and if the necessary resources are available to the grantee. This will include a discussion of the number of 502 and 504 units that will need to be committed to the grantee and the potential work impact on the office during the grant period. If it is determined that the County Office lacks the resources (either personnel or funds) to process all loan requests in a timely manner, the District Director must communicate this need to the State Director along with a recommended solution. (Lack of resources at the county level are not grounds to deny a request). After the District Director has determined that the preapplication is complete and accurate, the District Director will assemble the material in an applicant case file and forward it to the State Director. The case file, as a minimum, must contain the following:

(i) Form SF-424,

(ii) Original and one copy of Form FmHA 1940-20, "Request for Environmental Information,"

(iii) Eligibility recommendations, and

(iv) HUD Form 935.2 "Affirmative Fair Housing Marketing Plan", if applicable.

(2) The State Director may, if needed, submit the organizational documents with any comments or questions to the Office of General Counsel (OGC) for a preliminary opinion as to whether the applicant is or will be a legal organization of the type required by these regulations and for advice on any other aspects of the preapplication.

(3) The State Director, if unable to determine eligibility or qualifications with the advice of the OGC, may submit the preapplication to the National Office for review. The preapplication will contain all memoranda from OGC giving the results of its review. The State Director will identify in the transmittal memorandum to the National Office the specific problem and will recommend possible solutions and any information about the applicant which would be helpful to the National Office in reaching a decision.

(4) After an eligibility determination has been made, which should be completed within 30 days unless OGC is involved, the State Director will:

(i) If the applicant is eligible, contact the National Office as to the availability of funds or submit the proposal to the National Office for authorization if the requested amount exceeds the State Director's approval authority. If funds are available, the final review officer, either the State Director or the Assistant Administrator, Housing will issue a letter of conditions that the applicant must meet and direct the District Director to issue Form AD-622, "Notice of Preapplication Review Action."

(ii) If the applicant is determined not eligible, the State Director will direct the District Director to issue Form AD-622.

(c) *Form AD-622, "Notice of Preapplication Review Action."* (1) If the applicant is eligible and after the State Director has returned the preapplication information and the executed original Form FmHA 1940-20 to the District Office, the District Director will, within 10 days, prepare and issue Form AD-622. The original Form AD-622 will be signed and delivered to the applicant along with the letter of conditions, a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(2) If the applicant is not eligible and after the State Director has returned the preapplication information, the District Director will within 5 days notify the applicant on Form AD-622. The notification will inform the applicant that an appeal of the decision may be made to the National Appeals Staff under subpart B of part 1900 of this chapter.

(3) If the applicant is eligible and no grant or loan funds are available, the State Director will return the preapplication information to the District Director who will, within 10 days, notify the applicant on Form AD-622. The notification will explain the facts concerning the lack of funding and that FmHA will notify them when funding will be available. This is not an appealable decision.

(d) *Self-help technical assistance grant predevelopment agreement.* If the grantee requested predevelopment assistance and the State Director determines that the applicant lacks the financial resources to meet the conditions of grant approval, a grant of up to $10,000 and for up to six months will be made in order for the applicant to provide what is required by paragraph (e) of this section. Exhibit D of this subpart will be used for this purpose. Existing grantees proposing to operate in an area different from the area that they are currently funded to operate are eligible for this grant. However, this grant is available only once for a defined area. This grant is available only after the letter of conditions has been issued. Denial of this assistance is an appealable decision under subpart B of part 1900 of this chapter.

(e) *Form SF-424, "Application for Federal Assistance."* The applicant will submit Form SF-424 in an original and one copy to the District Director. The application should provide a detailed proposal of its goals including:

(1) Names, addresses, number in household, and total annual household income of families who have been contacted by the applicant and are interested in participating in a self-help housing project. Community organizations including minority organizations may be used as a source of names of people interested in self-help housing.

(2) Proof that the first group of prospective participating self-help families have qualified for financial assistance.

(3) Evidence that lots are optioned by the prospective participating self-help families for the first group. Evidence that lots are available for the remaining groups.

(4) Detailed cost estimates of houses to be built by the mutual self-help method. Plans and specifications should be submitted with the cost estimates.

(5) Proposed staffing need, including qualifications, experience, proposed hiring schedule, and availability of any prospective employees.

(6) Name, address, and official position of the applicant's representative or representatives authorized to act for the applicant and work with FmHA.

(7) Budget information including a detailed budget for the Agreement period based upon the needs outlined in the proposal. SF 424A will be completed to furnish the budget information.

(8) Indirect or direct cost policy and proposed indirect cost rate developed in accordance with 7 CFR part 3015 and part 3016.

(9) Personnel procedures and practices that will be established or are in existence. Forms to be used should be submitted with the application.

(10) A proposed monthly activities schedule showing the proposed dates for starting and completing the recruitment, loan processing and construction phases for each group of participant families.

§ 1944.411 Conditions for approving a grant.

A grant may be approved for an eligible applicant when the conditions in the letter of conditions are met and the following conditions are present:

(a) The applicant has or can hire, or contract directly or indirectly with, qualified people to carry out its responsibilities in administering the grant.

(b) The applicant has met all of the conditions listed in § 1944.410(e) of this subpart.

(c) The grantee furnishes a signed statement that it complies with the requirements of the Departmental Regulations found in 7 CFR part 3015 and part 3016.

(d) A resolution has been adopted by the board of directors which authorizes the appropriate officer to execute Exhibit A of this subpart and Form FmHA 400-1, "Equal Opportunity Agreement."

(e) The grantee has fidelity bonding as covered in 7 CFR part 3015 if a nonprofit organization or, if a State or local government, to the extent required in 7 CFR part 3016.

(f) The grantee has agreed by completing SF-424B, "Assurances-Non Constitutional Programs," that it will establish a recordkeeping system that is certifiable by a certified public accountant that it adequately meets the Agreement.

(g) The grantee has established an interest bearing checking account on which at least two bonded officials will sign all checks issued and understands that interest earned in excess of $250.00 annually must be submitted to FmHA quarterly. (The use of minority depository institutions is encouraged.)

(h) The grantee has developed an agreement to be executed by the grantee and the self-help participants which clearly sets forth what is expected of each and has incorporated Exhibit B-2 of this subpart which clearly shows what work is expected of the participating family.

§ 1944.412 Docket preparation.

When the application and all items required for the complete docket have been received, the District Director will thoroughly examine it to insure the application has been properly and accurately prepared and that it includes the required dates and signatures. The docket items will be assembled and distributed by the District Director in the following order:

Form No.	Name of form or document	Total No. of copies	Signed by applicant	No. for agreement docket	Copy for applicant
SF-424	Application for Federal Assistance	3	1	1-O and 1C	1-C
AD-622	Notice of Preapplication Review Action	2		1-C	1-O
FmHA 1940-1	Request for Obligation of Funds	4	2	3-O and 2C	1-C
FmHA 400-4	Assurance Agreement	2	1	1-O	1-C
	HUD Form 935.2, Affirmative Fair Housing Marketing Plan	3	1	1-O and 1C	1-C
	Certified Copy Authorizing Resolution	1	1	1-O	-
	Self-Help Technical Assistance Grant Agreement (Exhibit A)	2	1	1-O	1-C
	Any Personnel Forms to be used	2		1-O	1-C

O = Original.
C = Copy.

§ 1944.413 Grant approval.

(a) *Approval of grant.* Within 30 days of the grantee meeting the conditions of § 1944.411 of this subpart or, if applicable, signing Exhibit D, the approving official will:

(1) Execute and distribute Form FmHA 1940-1 in accordance with the Forms Manual Insert (FMI).

(2) After the Finance Office acknowledges that funds are obligated, request an initial advance of funds on Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request," in accordance with the FMI. The amount of this request should cover the applicant's needs for the remainder of the month in which the grant is closed plus the next month. Subsequent advances will cover only a one-month period.

(b) *Cancellation of an approved grant.* An approved grant may be canceled before closing if the applicant is no longer eligible, the proposal is no longer feasible, or the applicant requests cancellation. Cancellation will be accomplished as follows:

(1) The District Director will prepare Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," according to the FMI and send it to the State Director with the reasons for cancellation. If the State Director approves the request, Form FmHA 1940-10 will be returned to the District Office for processing in accordance with the FMI.

(2) The District Director will notify the applicant of the cancellation and the right to appeal under subpart B of part 1900 of this chapter. If the applicant requested the cancellation, no appeal rights are provided, but the applicant will still be notified of the cancellation.

(c) *Disapproval of grant.* If a grant is disapproved after the docket has been developed, the approving official will state the reason on the original Form FmHA 1940-1, or in a memorandum to the District Director. The District Director will notify the applicant in writing of the disapproval and the reason for disapproval. Also, the notification will inform the applicant of its appeal rights under subpart B of part 1900 of this chapter.

§ 1944.414 [Reserved]

§ 1944.415 Grant approval and other approving authorities.

(a) The State Director is authorized to approve or disapprove TA grants under this subpart. For a grant in excess of $300,000, or in the case of a grant amendment when the amount of the grant plus any unexpended funds from a previous grant will exceed $400,000, prior written consent of the National Office is required. In such cases, the docket, along with the State Director's recommendations, must be submitted to the National Office for review.

(b) The State Director may approve a grant not to exceed $10,000 to an eligible organization under § 1944.410(d) of this subpart. The grant must be limited to 6 months and funds must be used for the development of the final application, family recruitment, and related activities as explained in § 1944.410(e) of this subpart. The amount of this grant will not be included in figuring TA cost per units.

(c) The authority to contract for services is limited to the Administrator of FmHA.

(d) Monthly expenditures of the grantee will normally be approved by the District Director unless:

(1) The grantee operates in only one county, in which case the authority may be delegated to the County Supervisor.

(2) The grantee operates in more than one FmHA District, in which case the State Director will designate the approving official.

(3) The grantee operates in more than one State Director's jurisdiction, in which case the Administrator will designate the approving official.

(4) The expenditure is under contract authority, in which case the Contracting Official Representative will approve the monthly expenditure.

§ 1944.416 Grant closing.

The grant is closed on the date the Agreement is executed as defined in § 1944.403(a) by the applicant and the Government. Funds may not be advanced prior to the signing of the Agreement. The District Director or

Assistant District Director are authorized to execute the Agreement for FmHA. Person(s) authorized by resolution may sign for the applicant.

§ 1944.417 Servicing actions after grant closing.

FmHA has a responsibility to help the grantee be successful and help the grantee avoid cases of fraud and abuse. Servicing actions also include correlating activities between the grantee and FmHA to the benefit of the participating families. The amount of servicing actions needed will vary in accordance with the experience of the grantee, but as minimum the following actions are required:

(a) Monthly, the grantee will provide the District Director with a request for additional funds on Form SF-270, "Request for Advance or Reimbursement." This request need only show the amount of funds used during the previous month, amount of unspent funds, projected need for the next 30 days, and written justification if the request exceeds the projected need for the next 30 days. This request must be in the District Director's office fifteen days prior to the beginning of the month. Upon receipt of the grantee's request, the District Director will:

(1) If the request appears to be in order, process Form FmHA 440-57 so that delivery of the check will be possible on the first of the next month.

(2) If the request does not appear to be in order, immediately contact the grantee to resolve the problem. After the contact:

(i) If the explanation is acceptable, process Form FmHA 440-57 so delivery may be possible by the first of the next month, or

(ii) If the explanation is not acceptable, immediately notify the grantee and request the amount of funds that appear reasonable for the next 30 days on Form FmHA 440-57, so that delivery may be possible by the first of the next month. Unapproved funds that are later approved will be added to the next month's request.

(b) Quarterly, the grantee will submit Exhibit B of this subpart in an original and three copies to the County Supervisor on or before January 15, April 15, July 15, and October 15 which will verify its progress toward meeting the objectives stated in the Agreement and the application. The County Supervisor will immediately complete the County Office review part and forward the report to the District Office. After Exhibit C is received in the District Office, a meeting should be scheduled between the grantee, District Director, and the County supervisor since this is an opportune time for both the grantee and FmHA to review progress to date and make necessary adjustments for the future. This meeting is required if the grantee was previously identified as a problem grantee or will be identified as a problem grantee at this time. Regardless of whether a meeting will be held, the following will be done:

(1) Exhibit B and other information will be evaluated to determine progress made to date. The District Director will comment on Exhibit B as to whether the grantee is ahead or behind schedule in each of the following areas:

(i) *Assisting the projected number of families.*

(ii) *Serving very low-income applicants.* Is the grantee reaching a minimum of very low-income families as required in Exhibit A, Attachment 2 to subpart L of part 1940 of this chapter (available in any FmHA office).

(iii) *Equivalent units (EUs).* Is the number of EUs completed representative of lapse in time of the grant? For example, if 25 percent of the grant period has elapsed, are 25 percent of the number of EUs completed?

(iv) *Labor contributions by the family.* Are the families working together and are they completing the labor tasks as established on Exhibit B-2?

(2) The District Director will submit Exhibit B to the State Director who will evaluate the quarterly report along with the District Director's comments. If the State Director determines the grantee is progressing satisfactorily, the State Director will sign and forward Exhibit B to the National Office. However, if the State Director determines the grantee is not performing as expected, the State Director will notify the grantee that it has been classified a "High Risk" grantee. The

notice will specify the deficiencies and inform the grantee of proposed remedies for noncompliance. The notice will advise the grantee that FmHA is available to assist and provide the name and address of an organization that is under contract with FmHA to assist them. The State Director will forward a copy of Exhibit B, District Directors comments, and the reasons for classifying them as "High Risk" to the National Office, Single Family Housing, Special Programs Branch. When the period of time provided for corrective action has expired, an assessment will be made of the progress by the grantee toward correcting the situation. If the State Director determines:

(i) The situation has been corrected or reasonable progress has been made toward correcting the situation, the "High Risk" status will be lifted and the grantee so notified.

(ii) The situation has not been corrected but it is correctable if additional time is granted, an extension will be issued.

(iii) The situation has not been corrected and it is unlikely to be corrected if given additional time, the grant will be terminated under § 1944.426(b)(1) of this subpart.

§ 1944.418 [Reserved]

§ 1944.419 Final grantee evaluation.

Near the end of the grant period but prior to the last month, an evaluation of the grantee will be conducted by FmHA. The State Director may use FmHA employees or an organization under contract to FmHA to provide the evaluation. The evaluation is to determine how successful the grantee was in meeting goals and objectives as defined in the agreement, application, this regulation, and any amendments.

(a) This is a quantitative evaluation of the grantee to determine if it met its goals in:

(1) Assisting the project number of families in obtaining adequate housing.

(2) Meeting the goal of assisting very low-income families.

(3) Meeting the family labor requirement in § 1944.411(h) and Exhibit B-2 of this subpart.

(4) Keeping costs within the guide set in § 1944.407.

(5) Meeting order objectives in the Agreement.

(b) The evaluation is a narrative addressed to the State Director with a copy of the National Office, Single Family Housing Processing Division. It will be in 3 parts, namely; findings, recommendations, and an overall rating. The rating will be either unacceptable, acceptable, or outstanding, as follows:

(1) Outstanding if the grantee met or exceeded all of the goals in paragraph (a) of this section.

(2) Acceptable if the grantee met or exceeded all of the goals as defined in paragraph (a) except two.

(3) Unacceptable if the grantee failed to obtain an acceptable rating.

(c) After the State Director has reviewed the evaluation, a copy will be mailed to the grantee. The grantee may request a review of the evaluation with the District Director. This review is for clarification of the material and to dispute the findings if they are known to be wrong. The rating is not open for discussion except to the extent it can be proven that the findings do not support the rating. If this is the case, the District Director will file an amendment to the State Director.

§ 1944.420 Extension or revision of the grant agreement.

The State Director may authorize the District Director to execute on behalf of the Government, Exhibit C of this subpart, at any time during the grant period provided:

(a) The extension period is for no more than one year from the final date of the existing Agreement.

(b) The need for the extension is clearly justified.

(c) If additional funds are needed, a revised budget is submitted with complete justification, and

(d) The grantee is within the guidelines in § 1944.407 of this subpart or the State Director determines that the best interest of the Government will be served by the extension.

§ 1944.421 Refunding of an existing grantee.

Grantees wishing to continue with self-help efforts after the end of the current grant plus any extensions should file Form SF-424, in accordance with § 1944.410(e). It is recommended that it be filed at least 6 months before the end of the current grant period. Funds from the existing grant may be used to meet the conditions of a new grant to serve the same or redefined geographic area. If the grantee is targeting a different geographic area, a new preapplication must be submitted in accordance with § 1944.410 and the grantee may apply for a predevelopment grant in accordance with § 1944.410(d). In addition to meeting the conditions of an applicant as defined in § 1944.411 of this subpart, the grantee must also have received or will receive an acceptable rating on its current grant unless an exception is granted by the State Director. The State Director may grant an exception to the rating if it is determined that the reasons causing the previous unacceptable rating have been removed or will be removed with the approval of this grant.

§ 1944.422 Audit and other report requirements.

The grantee must submit an audit to the appropriate FmHA District Office annually (or biannually if a State or local government with authority to do a less frequent audit requests it) and within 90 days of the end of the grantee's fiscal year, grant period, or termination of the grant. The audit, conducted by the grantee's auditors, is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), using the publication "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with 7 CFR parts 3015 and 3016 and FmHA requirements as specified in this subpart. Audits of borrower loan funds will be required. The number of borrower accounts audited will be determined by the auditor. In incidences where it is difficult to determine the appropriate number of accounts to be audited, auditors should be authorized by the State Director to audit the lesser of 10 loans or 10 percent of total loans.

(a) *Nonprofit organizations and others.* If determined necessary these organizations are to be audited in accordance with FmHA requirements OMB Circular A-110, A-133, and 7 CFR part 3015. These requirements also apply to public hospitals, public colleges, and universities if they are excluded from the audit requirements of paragraph (b) of this section.

(1) An audit conducted by the grantee's auditor shall be supplied to the FmHA District Director as soon as possible but in no case later than ninety (90) days following the period covered by the grant agreement.

(2) Auditors shall promptly notify United States Department of Agriculture's Office of the Inspector General Regional Inspector General and the FmHA District Office, in writing, of any indication of fraud, abuse, or illegal acts in grantees use of grant funds or in the handling of borrowers accounts.

(3) Nonprofit organizations that receive less than $25,000 a year in Federal financial assistance need not be audited.

(b) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and 7 CFR part 3016. The grantee will forward completed audits to the appropriate Federal cognizant agency and a copy to the FmHA District Director. "Cognizant agency" means the Federal agency assigned by OMB Circular A-128. Within USDA, and OIG shall fulfill cognizant agency responsibilities. Smaller grantees not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the State Director will contact the appropriate USDA OIG Regional Inspector General. FmHA and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG.

(1) State and local governments and Indian tribes that receive $25,000 or more a year in Federal financial assistance shall have an audit made in accordance with 7 CFR part 3016.

(2) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from 7 CFR part 3016.

(3) Public hospitals and public colleges and universities may be excluded by the State Director from OMB Circular A-128 audit requirements. If such entities are excluded, audits shall be made in accordance with paragraph (a) of this section.

§ 1944.423 Loan packaging and 502 RH application submittal.

A grantee is required to assist 502 RH applicants in submitting their application for a RH loan. Loan packaging will be performed in accordance with Exhibit A of subpart A of part 1944 of this chapter; therefore, it is important that the grantee be trained at an early date in the packaging of RH loans. Typically, this training should take place before the first applications are submitted to the County Office and before the grant is closed. A grantee should become very knowledgeable of FmHA's eligibility requirements but must understand that only FmHA can approve or deny an applicant assistance. Grantee must work cooperatively with FmHA in the 502 loan approval process and must work within the regulations for the 502 program and recognize FmHA's ultimate decision making authority to approve or deny loans. However, the grantee may ask for clarification that may be helpful in working with future applicants. Grant funds may not be used to pay any expense in connection with an appeal that the applicant may file or pursue.

§ 1944.424 Dwelling construction and standards.

All construction will be performed in accordance with subpart A of part 1924 of this chapter. The planned work must meet the building requirements of subpart A of part 1944 of this chapter and meet the Development Standards as defined in subpart A of part 1924 of this chapter and in any local codes. Sites and site developments must conform to the requirements of subpart C of part 1924 of this chapter.

§ 1944.425 Handling and accounting for borrower loan funds.

Grantees will be required to administer borrower loan funds during the construction phases. The extent of their involvement will depend on the experience of the grantee and the amount of authority delegated to them by the District Director in accordance with § 1924.6(c) of subpart A of part 1924 of this chapter. Training should include FmHA's non-discrimination policies in receiving applications.

§ 1944.426 Grant closeout.

(a) *Grant purposes completed.* Promptly after the date of completion, grant closeout actions will be taken to allow the orderly discontinuance of grantee activity.

(1) The grantee will immediately refund to FmHA any balance of grant funds advanced that are not committed for the payment of authorized expenses as prescribed in § 1951.58(j) of FmHA Instruction 1951-B (available in any FmHA office).

(2) The grantee will furnish Form SF-269A, "Financial Status Report (short form)" to FmHA within 90 days after the date of completion of the grant. All other financial, performance, and other reports required as a condition of the grant also will be completed.

(3) After the grant closeout, FmHA retains the right to recover any disallowed costs which are discovered as a result of the final audit. Subpart M of part 1951 of this chapter will be used by FmHA to recover any unauthorised expenditures.

(4) The grantee will provide FmHA an audit conforming to those requirements established in this part, including audits of self-help borrower accounts.

(5) Upon request from the recipient, any allowable reimbursable cost not

covered by previous payments shall be promptly paid by FmHA.

(b) *Grant purposes not completed—* (1) *Notification of termination.* The State Director will promptly notify the grantee and the National Office in writing of the termination action including the specific reasons for the decision and the effective date of the termination. The notification to the grantee will specify that if the grantee believes the reason for the proposed termination can be resolved, the grantee should, within 15 calendar days of the date of this notification, contact the State Director in writing requesting a meeting for further consideration. The meeting will be an informal proceeding at which the grantee will be given the opportunity to provide whatever additional information it believes should be considered in reaching a decision concerning the case. The grantee may have an attorney or any other person present at the meeting if desired. Within 7 calendar days of the meeting, the State Director will determine what action to take.

(i) If the State Director determines that termination is not necessary, the grantee will be informed by letter along with the District Director.

(ii) If the State Director determines that termination of the grant is appropriate, he/she will promptly inform the grantee by the use of Exhibit B-3 of subpart B of part 1900 of this chapter.

(2) *National Office review.* (i) Upon receipt of a request from a grantee that the decision of the State Director be reconsidered, the National Office will make a preliminary decision concerning the continued funding of the grantee during the appeal period. Written notification of the decision will be given to the State Director and grantee.

(ii) The National Office will then obtain a comprehensive report on the matter from the State Office. This information will be considered together with any additional information that may be provided by the grantee.

(c) *Grant suspension.* When the grantee has failed to comply with the terms of the agreement, the District Director will promptly report the facts to the State Director. The State Director will consider termination or suspension of the grant usually only after a Grantee has been classified as "high risk" in accordance with § 1944.417(b)(2) of this subpart. When the State Director determines that the grantee has a reasonable potential to correct deficiencies the grant may be suspended. The State Director will request written authorization from the National Office to suspend a grantee. The suspension will adhere to 7 CFR parts 3015 and 3016. The grantee will be notified of the grant suspension in writing by the State Director. The State Director will also promptly inform the grantee of its rights to appeal the decision by use of Exhibit B-3 of subpart B of part 1900 of this chapter.

(d) *Grant termination.* The State Director may terminate the grant agreement whenever FmHA determines that the grantee has failed to comply with terms of the Agreement. The reasons for termination may include, but are not limited to, such problems as listed in paragraph (e)(3)(i) of Exhibit A of this subpart. The State Director may also withhold further disbursement of grant funds and prohibit the grantee from incurring additional obligations of grant funds with written approval of the National Office. FmHA will allow all necessary and proper costs which grantee could not reasonably avoid.

(i) *Termination for cause.* The grant agreement may be terminated in whole, or in part, at any time before date of completion, whenever FmHA determines that the grantee has failed to comply with terms of the Agreement. The State Director will notify the grantee in writing giving the reasons for the action and inform the grantee of its rights of appeal by use of Exhibit B-3 of subpart B of part 1900 of this chapter.

(ii) *Termination for convenience.* FmHA or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the grant would not produce beneficial results. The two parties will agree in writing to the termination conditions including the effective date. No notice of rights of appeal will be issued by FmHA.

§ 1944.427 Grantee self-evaluation.

Annually or more often, the board of directors will evaluate their own self-help program. Exhibit E of this subpart is provided for that purpose. It is also recommended that they review their personnel policy, any audits that may have been conducted and other reports to determine if they need to make adjustments in order to prevent fraud and abuse, and meet the goals in the current grant agreement.

§§ 1944.428—1944.449 [Reserved]

§ 1944.450 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have ben approved by the Office of Management and Budget and have been assigned OMB control number 0575-0043. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 18 hours per response, with an average of 1.17 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-0043), Washington, DC 20503.

EXHIBITS TO SUBPART I

EXHIBIT A—SELF-HELP TECHNICAL ASSISTANCE GRANT AGREEMENT

THIS GRANT AGREEMENT dated _______, 19___, is between __________

____

a nonprofit corporation ("Grantee"), organized and operating under

____

(authorizing State statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture ("FmHA").

In consideration of financial assistance in the amount of $_______ (called "Grant Funds") to be made available by FmHA to Grantee under section 523(b)(1)(A) of the Housing Act of 1949 to be used in (specify area to be served) _______ for the purpose of providing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts. Grantee will provide such a program in accordance with the terms of this Agreement and FmHA regulations.

Definitions:

Date of Completion means the date when all work under a grant is completed or the date in the TA Grant Agreement, or any supplement or amendment thereto, on which Federal assistance ends.

Disallowed costs are those charges to a grant which the FmHA determines cannot be authorized.

Grant Closeout is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

Termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

Terms of agreement:

(a) This Agreement shall terminate _______ years from this date unless extended or sooner terminated under paragraphs (e) and (f) of this Agreement.

(b) Grantee shall carry out the self-help housing activity described in the application docket which is attached to and made a part of this Agreement. Grantee will be bound by the conditions set forth in the docket, 7 CFR part 1944, subpart I, and the further conditions set forth in this Agreement. If any of the conditions in the docket are inconsistent with those in the Agreement or subpart I of part 1944, the latter will govern. A waiver of any condition must be in writing and must be signed by an authorized representative of FmHA.

(c) Grantee shall use grant funds only for the purposes and activities specified in FmHA regulations and in the application docket approved by FmHA including the approved budget. Any uses not provided for in the approved budget must be approved in writing by FmHA in advance.

(d) If Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA employees for similar expenses. If Grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which Grantee is a part; if none are customary, the FmHA rates will be the maximum allowed.

(e) Grant closeout and termination procedures will be as follows:

(1) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of Grantee activity.

(i) Grantee shall immediately refund to FmHA any uncommitted balance of grant funds.

(ii) Grantee will furnish to FmHA within 90 days after the date of completion of the grant a "Financial Status Report", Form SF-269A. All financial, performance, and other reports required as a condition of the grant will also be completed.

(iii) Grantee shall account for any property acquired with technical assistance (TA) grant funds, or otherwise received from FmHA.

(iv) After the grant closeout, FmHA retains the right to recover any disallowed costs which may be discovered as a result of any audit.

(2) When there is reasonable evidence that Grantee has failed to comply with the terms of this Agreement, the State Director may determine Grantee as "high risk". A "high risk" Grantee will be supervised to the extent necessary to protect the Government's interest and to help Grantee overcome the deficiencies.

(3) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole, or in part, 90 days after a Grantee has been classified as "high risk" if the State Director determines that Grantee has failed to correct previous deficiencies and is unlikely to correct such items if additional time is allowed. The reasons for termination may include, but are not limited to, such problems as:

(A) Actual TA costs significantly exceeding the amount stipulated in the proposal.

(B) The number of homes being built is significantly less than proposed construction or is not on schedule.

(C) The cost of housing not being appropriate for the self-help program.

(D) Failure of Grantee to only use grant funds for authorized purposes.

(E) Failure of Grantee to submit adequate and timely reports of its operation.

(F) Failure of Grantee to require families to work together in groups by the mutual self-help method in the case of new construction.

(G) Serious or repetitive violation of any of the provisions of any laws administered by FmHA or any regulation issued under those laws.

(H) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA in connection with any FmHA programs.

(I) Failure to establish an accounting system acceptable to FmHA.

(J) Failure to serve very low-income families.

(K) Failure to recruit families from substandard housing.

(ii) *Termination for convenience.* FmHA or Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(4) To terminate a grant for cause, FmHA shall promptly notify Grantee in writing of the determination and the reasons for and the effective date of the whole or partial termination. Grantee will be advised of its appeal rights under 7 CFR part 1900, subpart B.

(f) An extension of this grant agreement may be approved by FmHA provided, in its opinion, the extension is justified and there is a likelihood that the Grantee can accomplish the goals set out and approved in the application docket during the period of the extension.

(g) Grant funds may not be used to pay obligations incurred before the date of this Agreement. Grantee will not obligate grant funds after the grant termination or completion date.

(h) As requested and in the manner specified by FmHA, the Grantee must make quarterly reports, Exhibit C of this subpart (on 1/15, 4/15, 7/15 and 10/15 of each year), and a financial status report at the end of the grant period, and permit on-site inspections of program progress by FmHA representatives. FmHA may require progress reports more frequently if it deems necessary. Grantee must also comply with the audit requirements found in § 1944.422 of subpart I of 7 CFR part 1944, if applicable. Grantee will maintain records and accounts, including property, personnel and financial records, to assure a proper accounting of all grant funds. These records will be made available to FmHA for auditing purposes and will be retained by Grantee for three years after the termination or completion of this grant.

(i) Acquisition and disposal of personal equipment and supplies should comply with subpart R of 7 CFR part 3015 and subpart C of 7 CFR part 3016.

(j) Results of the program assisted by grant funds may be published by Grantee without prior review by FmHA, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, 42 U.S.C. 1471, *et seq.*, and that five copies of each such publication are furnished to the local representative of FmHA.

(k) Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

(l) Grantee shall comply with all civil rights laws and the FmHA regulations implementing these laws.

(m) In all hiring or employment made possible by or resulting from this grant, Grantee: (1) Will not discriminate against any employee or applicant for employment because of race, religion, color, sex, marital status, national origin, age, or mental or physical handicap, and (2) will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, marital status, national origin, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event Grantee signs a contract which would be covered by any Executive Order, law, or regulation prohibiting discrimination, Grantee shall include in the contract the "Equal Employment Clause" as specified by FmHA.

(n) It is understood and agreed by Grantee that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 *et seq.*, and related regulations, and that rights granted to FmHA in this Agreement or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect FmHA's financial interest.

(o) Grantee will maintain a code or standards of conduct which will govern the performance of its officers, employees, or agents. Grantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from suppliers, contractors, or others doing business with the grantee. To the extent permissible by State or local law, rules, or regulations such standards will provide for penalties, sanctions, or other disciplinary actions to be taken for violations of such standards.

(p) Grantee shall not hire or permit to be hired any person in a staff position or as a participant if that person or a member of that person's immediate household is employed in an administrative capacity by the organization, unless waived by the State Director. (For the purpose of this section, the term "household" means all persons sharing the same dwelling, whether related or not).

(q) Grantee's board members or employees shall not directly pr indirectly participate, for financial gain, in any transactions involving the organization or the participating families. This includes activities such as selling real estate, building material, supplies, and services.

(r) Grantee will retain all financial records, supporting documents, statistical records, and other records pertinent to this agreement for 3 years, and affirms that it is fully aware of the provisions of the Administrative Remedies for False Claims and Statements Act, 31 U.S.C. 3801, *et seq.*

By ______
(Signature)

______
(Title)
GRANTEE

By ______
(Signature)

______
(Title)
FARMERS HOME ADMINISTRATION

EXHIBIT B—EVALUATION REPORT OF SELF-HELP TECHNICAL ASSISTANCE (TA) GRANTS

Evaluation for Quarter Ending: (1) ______ 19 ______

1. a. Name of Grantee: (2) ______
   b. Address: (3) ______
   c. Area the grant serves: (4) ______
2. Date of Agreement: (5) ______ Time Extended (6) ______
3. a. Equivalent unit increase during quarter:

(7) ______
First Month
(8) ______
Second Month
(9) ______
Third Month

b. Cumulative total number of Equivalent Units since beginning of grant:

(10) ______
Total to Date

4. a. Method of Construction:
   Stick built ______%, Panelized ______% Combined ______%
   b. Number of bedrooms per house built this grant period:

2BR, ______
3BR, ______
______

c. Household size this Quarter:

1 person ______,
2 persons ______,
3 persons ______,
4 persons ______,
5 persons ______.

d. Number of houses under construction this grant period, but started during previous grant period: ______

5. a. Number of houses proposed under this grant:

(11) ______

b. Number of houses completed under this grant:

(12) ————————————

c. Number of houses currently under construction:

(13) ————————————

d. Number of families in pre construction:

(14) ————————————

e. Number of Construction Supervisors:

(15) ————————————

f. Number of TA employees:

(16) ————————————

6. a. Average time needed to construct a single house:

(17) ————————————

b. Number of months between submission of self-help borrower's docket and approval/rejection:

(18) ————————————

c. Number and percentage of loan docket rejections during reporting period: ______

(19) ————————————

7. a. Did any of the following adversely affect the Grantee's ability to accomplish program objectives?

	YES	NO
TA Staff Turnover		
FmHA Staff Turnover		
Bad Weather		
Loan Processing Delays		
Site Acquisition and Development		
Unavailable Loan/Grant Funds		
Lack of Participants		
Communication between FmHA/Grantee		

8. Attach information concerning number of families contacted, number who have indicated a willingness to be a participating family, number of mutual self-help groups organized, progress on any construction started, and any problems relating to the operation of this grant.

I certify that the statements made above are true to the best of my knowledge and belief.

(20) ————————————
(Date)

(21) ————————————
(Title)

GRANTEE
(22) ————————————
(Signature)

County Office Review

have reviewed the above information which I have found to be substantially correct. Must be completed by County Office.

Comment: Must be completed (23)

Average appraisal value of units financed this Quarter:

————————————

Average amount loan per unit financed this Quarter:

————————————

(24) ————————————
(Date)

(25) ————————————
County Supervisor

District Office Review

Comment: Must be completed (26)

(27) ————————————
Date

(28) ————————————
District Director

State Office Review

Comments: Must be completed (29)

(30) ————————————
Date

(31) ————————————
State Office Representative

EXHIBIT B-1—INSTRUCTIONS FOR PREPARATION OF EVALUATION REPORT OF SELF-HELP TECHNICAL ASSISTANCE GRANTS

Exhibit B will be used by all Technical Assistance (TA) Grantees obtaining self-help TA grants. This attachment provides the grantee and FmHA a uniform method of reporting the performance progress of self-help projects. The TA Grantee will prepare an original and 4 copies of the attachment. The TA Grantee will sign the original and 3 copies and forward it to the local FmHA County Office. The TA Grantee will keep the unsigned copy for its records.

The evaluation report will be completed in accordance with the following:

1. Enter the date the quarter ends either March 31, June 30, September 30, or December 31 and the year.
2. Enter the full name of the TA Grantee organization.
3. Enter the complete mailing address of the TA Grantee organization.
4. Enter the area served by the grant.
5. Enter the date of the initial self-help TA grant agreement.
6. Enter the time of any extension self-help TA grant agreement(s).
7. Insert the number of equivalent units (EU) completed the first/second/third month of the quarter using steps 1, 2, and 3 of Exhibit B-3.
8. Insert the number of EU's completed the second month of the quarter by using steps 1, 2, and 3 of Exhibit B-3.
9. Insert the number of EU's completed the third month of the quarter by using steps 1, 2, and 3 of Exhibit B-3.

10. Add items (7), (8), and (9) to the total from the previous quarterly report to obtain the cumulative total number of EU's. This total is the cumulative total number of EU's for the project.

11. Enter the number of houses planned in the TA Grantee proposal(s).

12. Enter the number of houses completed and occupied since the beginning of the grant.

13. Enter the number of houses that are under construction at the end of this quarter.

14. Enter the number of families in the pre-construction phase.

15. Enter the total number of construction supervisor(s) paid with TA grant funds.

16. Enter the number of employees paid with TA grant funds including those listed in item 15.

17. Insert the average elapsed time needed per house from excavation to final inspection by FmHA to complete construction of a house. If no self-help homes have been completed by this grantee, use other projects or your best estimate as a guide.

18. Enter the number of months it takes on average to approve or reject a borrower's docket once it's submitted.

19. Enter number and percent of dockets submitted and rejected this quarter.

20. Enter date of Exhibit submittal.

21. Insert title of the Grantee or authorized representative.

22. Signature of Grantee or authorized representative.

23. County Supervisor must answer questions concerning market value and loan amount and also should insert comments concerning progress of construction, success of the project and any problems that the organization may have.

24. Insert date of County Supervisor's review.

25. Signature of County Supervisor.

26. District Director representative should insert his/her comments concerning items listed in § 1944.417(b)(1) of 1944-I.

27. Insert date of District Director review.

28. Signature of District Director or representative.

29. Insert State Office comments.

30. Insert date of State Office review.

31. Signature of State Office representative.

EXHIBIT B-2—BREAKDOWN OF CONSTRUCTION DEVELOPMENT FOR DETERMINING PERCENTAGE CONSTRUCTION COMPLETED

	In percent—		
	With slab on grade	With crawl space	With basement
1. Excavation	3	5	6
The removal of earth to allow the construction of a foundation or basement.			
2. Footing, Foundations, columns	8	8	11
Footing: Construction of the spreading course or courses at the base or bottom of a foundation wall, pier, or column. Foundation: Construction of the supporting portion of a structure below the first floor construction, or below grade, including footing.			
3. Floor slab or framing	6	4	4
The floor slab consist of concrete, usually reinforced, poured over gravel and a vapor barrier with perimeter insulation to prevent heat loss.			
4. Subflooring	0	1	1
The installation of materials used for flooring that is laid directly on the joist and serving the purpose of a floor during construction prior installation of the finish floor.			
5. Wall framing sheathing	7	7	6
The construction process of putting together and erecting the skeleton parts of a building's walls (the rough lumber work) and, for the exterior walls, covering with sheathing (plywood, waferboard, oriented strand board or lumber) and insulating board to close up the side walls prior to the installation of finish materials on the surface.			
6. Roof and ceiling framing, sheathing	6	6	5
The process, or method, of putting the parts of a roof, such as truss, rafters, ridge and plates in position. Ceiling joist support the overhead interior lining of a room. Roof sheathing is any sheet material, such as plywood or particleboard, connected to the roof rafters or truss to act as a base for sheathing felt, shingles or other roof covers.			
7. Roofing	5	5	4
The installation of a material that acts as a roof covering, making it impervious to the weather, such as shingles over sheathing felt, tile, or slate.			
8. Siding, exterior trim, porches	7	7	6
The installation of lumber, panel products or other materials intended for use as the exterior wall covering including all trim.			
9. Windows and exterior doors	9	9	8
The installation of all exterior windows and doors. This includes securely fastening windows and doors plumb and level, square and true and adjusting sash, screens and hardware for smooth and proper operation.			
10. Plumbing—roughed in	3	2	3
Subject to local codes and regulations the installation of all parts of the plumbing system which must be completed prior to the installation of plumbing fixtures or appliances. This includes drain, waste, and vent piping, water supply, and the necessary built-in fixture supports.			
11. Sewage disposal	1	1	1

	In percent—		
	With slab on grade	With crawl space	With basement
Subject to local codes and regulations the construction and installation of a wastewater disposal system consisting of a house sewer, a pretreatment unit (*e.g.*, septic tank, individual package treatment plant), an acceptable absorption system (subsurface absorption field, seepage pit, or subsurface absorption bed). The system shall be designed to receive all sanitary sewage (bathroom, kitchen and laundry) from the dwelling, but not footing or roof drainage. It shall be designed so that gases generated anywhere in the system can easily flow back to the building sewer stack.			
12. Heating—roughed in	1	1	1
Subject to local codes and regulations the installation of ducts and/or piping and the necessary supports to minimize the cutting of walls and joist. This rough in is done before finish wall and floor installed.			
13. Electrical—roughed in	2	2	2
Subject to local codes and regulations the installation of conduit or cable and the location of switch, light, and outlet boxes with wires ready to connect. This roughing-in work is done before the dry wall finish is applied, and before the insulation is placed in the walls and ceiling.			
14. Insulation	2	2	2
The installation of any material used in walls, floors, and ceilings to prevent heat transmission as required by FmHA Instruction 1924-A, Exhibit D of 7 CFR of part 1924, subpart A.			
15. Dry wall	8	8	7
Dry walling is covering the interior walls using sheets of gypsum board and taped joints.			
16. Basement or porch floor, steps	1	1	6
The construction of basement or porch floors and steps whether wood or concrete.			
17. Heating—finished	3	3	3
Subject to local codes and regulations the installation of registers, grilles and thermostats.			
18. Flooring covering	6	6	5
The installation of the "finish flooring" (the material used as the final wearing surface that is applied to a floor). Floor covering include numerous flooring materials such as wood materials, vinyl, linoleum, cork, plastic, carpet and other materials in tile or sheet form.			
19. Interior carpentry, trim, doors	6	6	5
Installing visible interior finish work (molding and/or trim), including covering joints around window and door openings. The installation of an interior door including frames and trim.			
20. Cabinets and counter tops	1	1	1
Securing cabinets and counter tops (usually requiring only fastening to the wall or floor) that are plumb and level, square and true.			
21. Interior painting	4	4	3
Cleaning and preparation of all interior surfaces and applying paint in strict accordance with the paint manufacturer's instructions.			
22. Exterior painting	1	1	1
Cleaning and preparation of all exterior surfaces and applying paint in strict accordance with the paint manufacturer's instructions.			
23. Plumbing—complete fixtures	[illegible]	[illegible]	[illegible]

Subject to local codes and regulations the installation of a receptor or device which requires both a water supply connection and a discharge to the drainage system, such as water closets, lavatories, bathtubs or sinks. Also, the installation of an energized household appliance with plumbing connections, such as a clothes washer, water heater, dishwasher or garbage grinder.			
24. Electrical—complete fixtures	1	1	1
Subject to local codes and regulations the installation of the fixtures, the switches, and switch plates. This is usually done after the dry wall finish is applied.			
25. Finish hardware	1	1	1
The installation of all the visible, functional hardware in a house that has a finish appearance, including such features as hinges, locks, catches, pulls, knobs, and clothes hooks.			
26. Gutters and downspouts	1	1	1
The installation of a shallow channel of wood, metal, or PVC (gutters) positioned just below and following along the eaves of the house for the purpose of collecting and diverting water from a roof to a vertical pipe (downspouts) used to carry rainwater from the roof to the ground by way of a splash block or into a drainage system.			
27. Grading, paving, landscaping	3	3	3
Landscaping includes final grading, planting of shrubs and trees, and seeding or sodding of lawn areas. Final grading includes the best available routing of runoff water to assure that house and adjacent homes will not be endangered by the path of water runoff. The minimum slope should be 6″ in 10′ or 5% from the foundation of the home. Paving includes both driveways and walks.			
Total	100	100	100

EXHIBIT B-3—PRE-CONSTRUCTION AND CONSTRUCTION PHASE BREAKDOWN

I. *General.* This Exhibit will be used by Farmers Home Administration (FmHA) and the Grantee in determining Grantee performance as required in § 1944.417(b) of this subpart.

II. *Determining technical assistance (TA) cost per unit.*

A. Equivalent units are used to measure progress at any time during the period of the grant. It is necessary because self-help grantees have several groups of families in various stages of progress during the period of the grant. The following formula has been developed to provide a more accurate method of determining progress.

FORMULA

Phase breakdown	In percent—	
	Value of each phase	Cumulative
Pre-construction:		
Phase I	10	10
Phase II	10	10
Construction:		
Phase III	80	21-100

B. Using the Description of Phase Breakdown as a guide, the project staff selects the total percentage pertinent to the stage the self-help group is in and multiplies that percentage by the number of families (units) in the group. The result is the equivalent number of units completed. No credit may be given for Phase I, if the application is rejected. When this computation has been completed for each group that falls within Phases I-III, the total number of equivalent units is divided into the total grant funds expended to that date. The result is the TA cost per unit at that stage of the program's progress.

C. The definition of pre-construction and construction phases described are follows:

Pre-Construction

Phase I: Hold community meetings; conduct interviews; obtain house plans; prepare cost estimates; begin search for land; submit family applications to the lender; lender runs credit check; applications. Lender either approves or rejects.

Phase II: Organize an association of section 502 Rural Housing eligible families; association conducts weekly meetings at which required lender forms are discussed and completed; house plans and land sites are selected; outside speakers explain and discuss taxes, insurance, how to keep a checking account, how interest is computed, home maintenance, decorating, and landscaping; etc.; completed loan dockets for each family are submitted to the lender. Family loan dockets are reviewed and recommendations made as to the loan amounts requested; the lender reviews family loan dockets; preliminary title search of each proposed building site is begun; requests loan check from Finance Office; when check arrives, final title search is made, loan closed, checking accounts opened, and construction begun.

Construction: The grantee will utilize Exhibit B-2 which outlines 27 construction tasks to determine the percentage of completed construction activities.

D. The computation of equivalent units and TA costs will be computed as follows:

Exhibit C will be used for recording the following information and construction in this example which starts January 1.

Step 1

Both the grantee and FmHA review the FmHA loan application records to determine the percentage of completion for each family in the pre-construction phase of the program. These are Phases I-III. Total these percentages to find the number of "equivalent units" (EUs) completed at that date during pre-construction. For example, if there are eight families in Group #2 and all have completed the 20 percent phase of pre-construction, then there would be 1.6 EUs in the pre-construction phase of the program as of that date. Each phase must be completed before it is considered in the calculation.

Step 2

Refer to the records of construction progress for families in the construction Phase III. As of that date, the director totals the percentage of completion figures for each family as follows:

Askew	0.45
Whited	0.40
Martinez	0.40
Gonzalez	0.38
Sherry	0.34
Duran	0.33
Johnson	0.13
Harvey	0.31
EUs	2.92

Total production in the construction phase is therefore 2.92 EUs as of that date.

Step 3

Add the pre-construction and construction subtotals together:

Pre-construction	1.60
Construction	2.92
Total EUs	4.52

This provides the total EUs of production during the first three months of operation. Steps 1, 2, and 3 will be used to complete items 7, 8 and 9 of Exhibit B of this subpart.

III. *Preparation:*

Compile Exhibit B of this subpart in an original and four copies. The exhibit will be signed by the TA Grantee. Submit the original and three copies of the exhibit quarterly to FmHA County Office on or before January 15, April 15, July 15, and October 15, of each year for the quarters ending March 31, June 30, September 30, and December 31 of each year. The District Director will keep the original and forward two copies to the State Office. The State Office will forward one copy to the National Office. The State Office will prepare information concerning TA grants closed within 30 days of the end of a quarter on the next quarterly report.

EXHIBIT C—AMENDMENT TO SELF-HELP TECHNICAL ASSISTANCE GRANT AGREEMENT

This Agreement dated, ____ 19____

between ————————————

a nonprofit corporation ("Grantee"), organized and operating under

————————————

(authorizing State Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture ("FmHA"), amends the "Self-Help Technical Assistance Grant Agreement" between the parties dated ____ 19____, ("Agreement").

The Agreement is amended by providing additional financial assistance in the amount of ____ to be made available by FmHA to Grantee pursuant to section 523 of Title V of the Housing Act of 1949 for the purpose of assisting in providing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts; or

The Agreement is amended by changing the completion date specified in convenant 1 from ____ to ____ and by making the following attachments to this amendment: (List and identify proposal and any other documents pertinent to the grant.)

Agreed to this ____ day of ____ 19____.

————————————

(Name of Grantee)

By ————————————

(Signature)

————————————

(Title)

United States of America

By ————————————

(Signature)

————————————

(Title)

Farmers Home Administration

EXHIBIT D—SELF-HELP TECHNICAL ASSISTANCE GRANT PREDEVELOPMENT AGREEMENT

This grant predevelopment agreement dated, ____ 19 ____, is between

____

a nonprofit corporation ("Grantee"), organized and operating under

____

(authorizing State statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture ("FmHA").

In consideration of financial assistance in the amount of $____ ("Grant Funds") to be made available by FmHA to Grantee under section 523 (b)(1)(A) of the Housing Act of 1949 to be used in (specify area to be served) ____________ for the purpose of developing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts, Grantee will provide such a program in accordance with the terms of this Agreement and FmHA regulations.

Grant funds will be used for authorized purposes as contained in § 1944.410(d) of 7 CFR part 1944, subpart I, as necessary, to develop a complete program for a self-help TA grant. This will include recruitment, screening, loan packaging and related activities for prospective self-help participants.

Agreed to this ____ day of ____ 19____.

————————————

(Name of Grantee)

By ————————————

(Signature)

————————————

(Title)

United States of America

By ————————————

(Signature)

————————————

(Title)

Farmers Home Administration

EXHIBIT E—GUIDANCE FOR RECIPIENTS OF SELF-HELP TECHNICAL ASSISTANCE GRANTS (SECTION 523 OF HOUSING ACT OF 1949)

7 CFR part 1944, subpart I provides the specific details of this grant program. The

following is a list of some functions of the grant recipients taken from this subpart. With the list are questions we request to be answered by the recipients to reduce the potential for fraud, waste, unauthorized use or mismanagement of these grant funds. We suggest the Board of Directors answer these questions every six months by conducting their own review. Paid staff should not be permitted to complete this evaluation.

A. FAMILY LABOR CONTRIBUTION

1. Does your organization maintain a list of each family and a running total of hours worked (when and on what activity)? Yes No
2. Are there records of discussions with participating families counselling them when the family contribution is falling behind? Yes No
3. Are there obstacles which prevent the family from performing the required tasks? Yes No

B. USE OF GRANT FUNDS

1. Were grant funds used to pay salaries or other expenses of personnel not directly associated with this grant? Yes No
2. Were grant funds used to pay for construction work for participating families? Yes No
3. Were all purchases or rentals (item and cost) of office equipment authorized? Yes No
4. Are all office expenses authorized by 7 CFR part 1944, subpart I? Yes No
5. Was a record of long distance telephone calls maintained and was that log and telephone checked? Yes No
6. Was all travel and mileage incurred for official business and properly authorized in advance? Yes No
7. Were mileage and per diem rates within authorized levels? Yes No
8. Were participating families charged for use of tools? Yes No
9. Were grant funds expended to train grant personnel? Yes No
10. Was training appropriate for the individual trainee? Yes No
11. Were any technical or consultant services obtained for participating families? Yes No
12. Were the provided technical or consultant services appropriate in type and cost? Yes No

C. FINANCIAL RESPONSIBILITIES

1. Does each invoice paid by the grant recipient match the purchase order? Yes
2. Does each invoice paid by the borrower and FmHA match the purchase order? Yes
3. Were purchases made from the appropriate vendors? Yes
4. Are the invoices and itemized statements totalled for materials purchased for individual families? Yes
5. Is there a record of deposits and withdrawals to account for all loan funds? Yes No
6. Are checks from grant funds signed by the Board Treasurer and Executive Director? Yes No
7. Are grant funds deposited in an interest bearing account? Yes No
8. Are checks from loan funds prepared by the grant recipient for the borrower's and lender's signature? Yes No
9. Are checks from loan funds accompanied by accurate invoices? Yes No
10. Are any borrower loan funds including interests, deposited in grantee accounts? Yes No
11. Are checks from loan funds submitted to FmHA more often than once every 30 days? Yes No
12. Is the reconciliation of bank statements for both grant and loan funds completed on a monthly basis? Yes No
13. If the person who issues the checks also reconciles them, does the Executive Director review this activity? Yes No
14. Are materials purchased in bulk approved by the Executive Director? Yes No
15. Was the amount of materials determined by both the Executive Director and construction staff? Yes No
16. Were any participating families consulted about the purchase of materials? Yes No
17. Were savings accomplished by the bulk purchase method? Yes No
18. Did the Executive Director review the purchase order and the ultimate use of the materials? Yes No
19. Are materials covered by insurance when stored by grantee? Yes No

D. REPORTING

1. Are "Requests for Advance or Reimbursement" made once monthly to the FmHA District Office?	Yes	No
2. Has the grant recipient engaged a certified public Accountant (CPA) or CPA firm to review their operations on a regular basis: (Annually is preferable but every two years and at the end or the grant period are requirements)?	Yes	No
3. Are the quarterly evaluation reports submitted on time to the County Supervisor?	Yes	No

What, if any, problems exist that need to be corrected for effective management of the grant project?

Date

President, Board of Directors

(Period covered by report ______)

Answer Key

The following answers should help your organization in assessing its vulnerability to fraud, waste, and abuse. You should take actions to correct practices that now generate an answer different from the key.

Question	*Answer*
A. 1	Yes
A. 2	Yes
A. 3	Yes
B. 1	No
B. 2	No
B. 3	Yes
B. 4	Yes
B. 5	Yes
B. 6	Yes
B. 7	Yes
B. 8	No
B. 9	Yes
B. 10	Yes
B. 11	Yes
B. 12	Yes
C. 1	Yes
C. 2	Yes
C. 3	Yes
C. 4	Yes
C. 5	Yes
C. 6	Yes
C. 7	No
C. 8	Yes
C. 9	Yes
C. 10	No
C. 11	No
C. 12	Yes
C. 13	Yes
C. 14	Yes
C. 15	Yes
C. 16	Yes
C. 17	Yes
C. 18	Yes
C. 19	Yes
D. 1	Yes
D. 2	Yes
D. 3	Yes

EXHIBIT F—SITE OPTION LOAN TO TECHNICAL ASSISTANCE GRANTEES

I. *Objectives.* The objective of a Site Option (SO) loan under Section 523(b)(1)(B) of Title V of the Housing Act of 1949 is to enable technical assistance (TA) grantees to establish revolving fund accounts to obtain options on land needed to make sites available to families that will build their own homes by the self-help method. An SO loan will be considered only when sites cannot be made available by other means including a regular Rural Housing Site (RHS) loan.

II. *Eligibility requirements.* To be eligible for an SO loan, the applicant must be a TA grantee that is currently operating in a satisfactory manner under a TA grant agreement. If the SO loan applicant has applied for TA funds but is not already a TA grantee and it appears that the TA grant will be made, the SO loan may be approved but not closed until the TA grant is closed.

III. *Loan purposes.* Loans may be made only as necessary to enable eligible applicants to establish revolving accounts with which to obtain options on land that will be needed as building sites by self-help families participating in the TA self-help housing program. Loans will not be made to pay the full purchase price of land but only for the minimum amounts necessary to obtain an option from the seller. The option should be for as long as necessary but in no case should the option be for less than 90 days.

IV. *Limitations.*

(A) If the amount of an SO loan will exceed $10,000, the prior consent of the National Office shall be obtained before approval.

(B) The amount of the SO loan should not exceed 15 percent of the purchase price of the land expected to be under option at any one time, unless a higher percent is authorized by the State Director when other land in not available or the particular area requires more down payment than elsewhere or similar circumstances exist.

(C) Form FmHA 440-34, "Option to Purchase Real Property," will be used without modification in all cases for obtaining options under this subpart.

(D) The limitations of § 1822.266(b) (1) and (2) of subpart F of part 1822 of this chapter (FmHA Instruction 444.8, paragraphs VI B (1) and (2)) concerning land purchase will apply to options purchased under this subpart.

V. *Rates and terms.*

(A) *Interest.* Loans will be made at an interest rate of 3 percent.

(B) *Repayment period.* Each SO loan will be repaid in one installment which will include the entire principal balance and accrued interest. The maximum repayment period for each SO loan will be the applicant's remaining TA grant funding period.

(1) A shorter repayment period will be established if SO funds will not be needed for the entire TA grant funding period.

(2) If a regular RHS loan is to be processed, the SO loan should be scheduled for repayment when RHS loan funds will be available to purchase the land and repay the amount of SO funds advanced on the option, unless SO loan funds will still be needed to purchase other options. Under no circumstances, however, will the repayment period exceed the applicant's remaining TA grant funding period.

VI. *Processing application.*

(A) *Form of application:* The application for assistance will be in the form of a letter to the FmHA County Supervisor having jurisdiction over the area of the proposed site to be optioned. The letter will be signed by the applicant or its authorized representative and contain, as a minimum, the following information:

(1) A copy of the proposed option that shows a legal description of the land, option price, purchase price, and terms of the option. If more than one site is to be purchased, a schedule of the proposed options should be included.

(2) Information to verify that a regular RHS loan cannot be processed in time to secure the option.

(3) Proposed method repayment of the SO loan.

(4) Resolution from the applicant's governing body authorizing the application for an SO loan from FmHA.

(B) *Responsibility of the County Supervisor.* Upon receipt of an SO loan application, the County Supervisor will:

(1) Determine whether the applicant is eligible. If the applicant is not eligible, or the loan cannot be made for other reasons, the application may be rejected by the County Supervisor with the concurrence of the District Director. The reasons for the rejection should be clearly stated and provided, in writing to the applicant. The applicant will have the right to have the decision reviewed following the procedure established in subpart B of part 1900 of this chapter.

(2) Review and verify the accuracy of the information provided.

(3) Make an inspection and a memorandum appraisal of each proposed site "as is." The appraisal will include a narrative statement as to whether the site has been recently sold, verify that the seller is the owner of the property, and indicate whether the purchase price is acceptable based on the selling price of similar properties in the area.

(4) Indicate whether or not it appears that, considering the location and cost of development, adequate building sites can be provided at reasonable costs.

(5) If the option is for a tract of land on which 5 or more sites are proposed, the County Supervisor will forward to the District Director with recommendations as defined in § 1924.119 of subpart C of part 1924 of this chapter.

(6) If approval is recommended, prepare and have the applicant execute Form FmHA 1940-1, "Request for Obligation of Funds," for the amount needed. Copies of the form will be distributed as provided in the Forms Manual Insert (FMI).

(7) Forward the SO loan application and the applicant's TA application or TA docket to the State Director. The submission will include the appraisal report and the County Supervisor's comments and recommendations.

VII. *Loan approval authority and State Office actions.*

The State Director is authorized to approve SO loans developed in accordance with this Exhibit. The approval or disapproval of the loan will be handled in the same manner as provided in § 1822.272 of subpart F of part 1822 of this chapter (FmHA Instruction 444.8, paragraph XII). SO loans will be established in Automated Multiple Housing Accounting System (AMAS) using Form FmHA 1944-51, "Multiple Family Housing Obligation Fund Analysis". The Issue loan/Grant checks transaction will be used to request a check for SO loans.

VIII. *Loan closing.*

(A) *General.* Loan closing instructions will be provided by the Office of the General Counsel (OGC) to assure that the Promissory Note is properly completed and executed. The County Supervisor may then close the loan.

(B) *Security for the loan.* The loan will be secured by a Promissory Note properly executed by the grantee using Form FmHA 1940-16, "Promissory Note." A lien on the optioned real estate will not be taken.

(1) The "kind of loan" block on the note will read "SO loan."

(2) The note will be modified to show that the only installment on the loan will be the final installment.

(C) *Loan is closed.* The loan will be considered closed when the note is executed and the loan check delivered to the grantee.

IX. *Establishment of SO loan revolving account.*

(A) Supervised bank accounts will not be used for SO loans.

(B) Grantee will deposit SO loan funds in a depository institution of its choice. The use of minority institutions is encouraged. Such funds will remain separate from any other account of the grantee and shall be established as an SO revolving account.

(C) Checks drawn on the revolving account will be for the sole purpose of purchasing land options and must be signed by at least two authorized officials of the grantee who have been properly bonded in accordance with § 1944.411 (e) and (g) of this subpart.

(D) Grantees will not expend funds for any options until the site and the option form have been reviewed and approved by the County Supervisor.

(1) SO funds will not be left unused in the revolving account in excess of 60 days.

(2) If the funds are not used for the intended purpose within the 60 days specified above, the unused portion will be refunded on the account.

(E) When funds become available for repayment of the SO loan, such funds will be deposited in the revolving account for the purchase of additional site options if needed. If such funds are not needed to purchase more options, they will be applied on the SO loan.

X. *Source of funds.*

SO loans will be funded from the self-help housing land development fund.

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.451 General.

This subpart sets forth the policies and procedures and delegates authority for making initial and subsequent Rural Housing (RH) loans and/or grants to individuals under section 504 (a) of Title V of the Housing Act of 1949, as amended. The objective of the section 504 loan/grant program is to assist eligible, very low income, owner-occupants repair single family homes located in rural areas. Repairs may be made to improve or modernize the home, to make it safer and more sanitary, or to remove health and safety hazards. Grants are only available for repairs that remove health or safety hazards. Homes repaired with section 504 loan or grant funds must be modest in size and design.

[54 FR 14632, Apr. 12, 1989]

§ 1944.452 Equal credit opportunity.

Farmers Home Administration (FmHA) assistance and services will not be denied to any person based on race, sex, national origin, color, religion, marital status, age, handicap (provided the applicant possesses the capacity to enter into a a legally binding contract), receipt of income from public assistance, or because an applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

[54 FR 14632, Apr. 12, 1989]

§ 1944.453 Definitions.

The terms used in this subpart are defined in Subpart A of Part 1944 of this chapter unless otherwise specified.

(a) *Hazard.* A condition of the home or site which jeopardizes the health or safety of the occupants and/or the members of the community.

(b) *Major hazard.* A condition of the home or site so severe that it is unfit for habitation.

(c) *Mobile Home.* A mobile home is an older manufactured unit often referred to as a "trailer," designed to be used as a dwelling but built prior to the enactment of Pub. L. 96-399 (October 8, 1980).

[54 FR 14632, Apr. 12, 1989]

§§ 1944.454—1944.455 [Reserved]

§ 1944.456 Loan and grant purposes.

Section 504 grant funds may be used only to pay costs for repairs and improvements which will remove identified health or safety hazards. Loan funds may be used to improve or modernize dwellings regardless of the removal of health or safety hazards. Dwellings repaired with section 504 loan or grant funds need not be brought to agency development standards or thermal performance standards, nor must *all* of the existing hazards be removed provided the dwelling does not continue to have major health or safety hazards after the planned repairs are made. All work shall be in accordance with local codes and standards. When potentially hazardous equipment or materials (e.g. woodburning stoves) are being installed, all materials and installations shall be in accordance with applicable development standards of Subpart A of Part 1924 of this chapter. Authorized loan and grant purposes include but are not limited to the following:

(a) Installation or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements. Water supply and sewage disposal systems should be determined acceptable under Subparts A and C of Part 1924 of this chapter. However, those requirements may be waived by the State Director provided:

(1) The County Supervisor determines that the identified health hazard is severe and that the requirements in paragraph (a) of this section cannot be met, and

(2) The State Director agrees with the determination of the County Supervisor that the planned work is necessary and the requirements of paragraph (a) of this section (other than local health department requirements) are impractical.

(b) Payment of reasonable connection fees or prorata installation costs, which may include assessments for utilities (i.e., water, sewer, electricity or gas) which are required to be paid by the applicant and which cannot be paid from other funds.

(c) Energy conservation measures such as:

(1) Insulation; and

(2) Combination screen-storm windows and doors.

(d) Repair or replacement of the heating system including installing alternative systems such as woodburning stoves or space heaters, when appropriate.

(e) Electrical wiring.

(f) Repair of, or provision for, structural supports.

(g) Repair or replacement of the roof.

(h) Replacement of deteriorated siding.

(i) Payment of incidental expenses such as surveys, title clearance, loan closing, and architectural or other technical services.

(j) Necessary repairs to mobile/manufactured homes provided:

(1) The applicant owns the home and site and has occupied the home prior to filing an application with FmHA.

(2) The mobile/manufactured home is on a permanent foundation or will be put on a permanent foundation with section 504 funds. A permanent foundation will be either:

(i) A full below-grade foundation, or

(ii) A home on blocks, piers, or some similar type foundation, with skirting and anchoring with tie-downs.

(3) The mobile/manufactured home is in need of repairs to remove health or safety hazards.

(k) Additions to dwellings with grant funds (conventional, manufactured or mobile) only when it is clearly necessary to remove health or safety hazards to the occupants.

(l) Repair or remodel houses to make accessible and usable for handicapped or disabled persons.

(m) Payment of application packaging fees if all of the following conditions are met:

(1) The services provided results in significant financial savings to the Government, either directly or by reducing the workload involved in processing applications or loans/grants,

(2) The charges are reasonable, considering,

(i) The amount and purpose of the assistance,

(ii) The repayment ability of the recipient, and

(iii) The cost of similar services in the same or a similar rural area; and

(3) The packager is not receiving other compensation for the services such as, a real estate commission, grant funds, etc.

[54 FR 14633, Apr. 12, 1989]

§ 1944.457 Loan and grant restrictions.

(a) *Maximum loan or grant.* (1) Maximum assistance outstanding to any individual for initial or subsequent section 504 loans may not exceed a cumulative total of $15,000.

(2) Lifetime assistance to any individual for initial or subsequent section 504 grants may not exceed a cumulative total of $5,000.

(3) Transferees assuming section 504 loans are limited in the same manner to subsequent loans in amounts not to exceed the difference between the unpaid principal balance of the debt assumed and $15,000.

(4) Document the amount of assistance provided each borrower/grantee on a list of section 504 recipients and retain it in the office operational file. Maintenance of the list will permit destruction of closed section 504 assistance case folders as prescribed in § 2033.10(b)(4)(i) of FmHA Instruction 2033-A (available in any FmHA office). The list must include the following information recorded at the time a section 504 loan/grant is made.

(i) Borrower or grantee name, address, and case number.

(ii) Name of co-borrower/grantee(s), if any.

(iii) Amount of the loan and/or grant.

(iv) Date loan and/or grant was made.

(b) *Limitation on use of loan or grant funds.* Section 504 loan or grant funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make repairs to a dwelling of such poor condition that when the repairs are completed, the dwelling will continue to be a major hazard to the safety and health of the occupants.

(3) Move a mobile/manufactured home from one site to another.

(4) Pay for any off-site improvements except for those purposes in § 1944.456(b) of this subpart.

(5) Refinance any debt or obligation of the borrower/grantee other than obligations incurred for items covered by § 1944.456 of this subpart entered into after date of application (except for the payment of assessments for the installation cost of sewer and water facilities).

(c) *Limitation on use of grant funds.* In addition to the restrictions in paragraph (b) of this section, section 504 grant funds may not be used to make changes to the dwelling for cosmetic or convenience purposes, unless the work is directly related to the removal of hazards. Cosmetic and convenience changes might include, but are not limited to:

(1) Painting;

(2) Paneling;

(3) Carpeting;

(4) Improving clothes closets or shelving;

(5) Improving kitchen cabinets;

(6) Air conditioning; or

(7) Landscape plantings.

[54 FR 14633, Apr. 12, 1989]

§ 1944.458 Eligibility requirements.

Section 504 applicants must meet the following requirements:

(a) Meet the requirement of § 1944.9 (c) and (d) of Subpart A of this part.

(b) Meet the requirements of § 1944.9 (f) of Subpart A of this part. However, general credit requirements may be less stringent than those for section 502 loans. Very low-income applicants often have higher short-term debt loans in relation to income than persons with higher incomes which many times causes more late payments. Such a fact should not necessarily disqualify an applicant for a loan. The credit worthiness determination will depend on the particular situation involved and the amount of assistance requested.

(c) Own and occupy a single family dwelling located in a rural area that is in need of repair. Evidence of ownership will be presented as outlined in § 1944.461 (a) of this subpart.

(d) Be unable to obtain financial assistance from other non FmHA credit or grant sources, and lack personal resources that can be utilized to meet their needs. Personal resources such as cash, stocks, bonds, certificates of deposit, real estate assets, etc., will be considered in the following manner:

(1) Evaluation of personal resources will exclude the dwelling and a minimum adequate site, personal automobile, household goods, and liquid assets up to $5,000. Liquid assets are cash or any other asset that can be converted to cash in 90 days or less.

(2) In cases where the family is experiencing unusually high medical expenses, the District Director may

waive requiring the use of liquid assets down to $5,000.

(3) Personal assets which the applicant's livelihood are dependent upon (a major source of income essential to pay basic living expenses) or assets that are not economically feasible to liquidate may be exempted by the District Director.

(e) Have an adjusted annual income at the time of loan/grant approval, as defined in § 1944.6 of Subpart A of this part, which does not exceed the applicable very low-income limits in Exhibit C of Subpart A of this part (available in any FmHA office).

(f) Have sufficient and dependable income to repay the section 504 loan. An applicant whose income is not sufficient to fully meet the loan payments may obtain as a co-signer(s) a person(s) with dependably available income which will be sufficient to repay the loan. Form 1944-3, "Budget and/or Financial Statement" will be prepared for section 504 applicants to determine repayment ability.

(g) For grant assistance be an applicant/co-applicant that is 62 years of age or older and unable to repay a section 504 loan amortized over the maximum number of years for that cost of the repairs. In all cases involving a section 504 grant, Form FmHA 1944-3 will be completed before approval to determine loan repayment ability, and grant amount. The budget must evidence the applicant's lack of repayment ability for any part of the assistance to be received as a grant.

[54 FR 14633, Apr. 12, 1989

§§ 1944.459—1944.460 [Reserved]

§ 1944.461 Security and other requirements.

(a) *Evidence of ownership.* Applicants must submit evidence of ownership for retention in the case file. This evidence may be a certified or photocopy of the original ownership instrument. County Supervisors may seek advice from the Regional Attorney when necessary to determine the validity or adequacy of the evidence of ownership.

(1) The following will represent ownership:

(i) Full marketable title.

(ii) A land purchase contract.

(iii) An undivided interest in the property to be repaired when:

(A) The County Supervisor has no reason to believe the applicant's position of owner/occupant will be jeopardized as a result of the improvements to be made with loan/grant funds.

(B) In the case of a loan to be secured by a mortgage, any co-owner living or planning to live in the household will sign the mortgage.

(C) In the case of a grant, any co-owner living or planning to live in the household will sign the repayment agreement.

(iv) A leasehold interest in the property to be repaired. When the applicant's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the case file. The unexpired portion of the lease must not be less than 2 years beyond the term of the Promissory Note or, in the case of a grant, a period of not less than 5 years. The lease must also meet the requirements of § 1944.15(a)(5)(iv) of Subpart A of this part.

(v) A life estate, with the right of present possession, control, and beneficial use of the property.

(vi) Grazing permits or land assignments may be accepted only for unsecured loans or grants made to Indians living on a reservation, when historically the documents have been used by the Tribe and have had the comparable effect of a life estate.

(2) The following may also be accepted as evidence of ownership:

(i) Any instrument, whether or not recorded, which is commonly considered evidence of ownership.

(ii) Evidence that the applicant is listed as the owner of the property by the local taxing authority and that real estate taxes for the property are paid by the applicant.

(iii) Affidavits by others in the community that the applicant has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

(b) *Real estate mortgage.* A section 504 loan of $2,500 or more will be secured by a mortgage on the property (or any leasehold interest or land purchase contract) being improved with the loan. The total of all debts secured by the property may not exceed the value of the security. In the case of possessory rights on an Indian reservation or State-owned land, exceptions to the usual security requirements must be made in accordance with § 1944.18(b) (2) or (3) of Subpart A of this part.

(1) *Subsequent loans.* Subsequent loans will be secured by a mortgage when the subsequent loan plus any outstanding loan balance is $2,500 or more. When a real estate mortgage is required, each outstanding promissory note will be described in the mortgage.

(2) *Undivided ownership interest.* Security on an undivided ownership interest may exclude mortgaging the co-owner's interests when:

(i) One or more of the co-owners are not legally competent, cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all interests to be mortgaged;

(ii) The interests excluded do not represent more than 50 percent of all ownership interests;

(iii) All legally competent co-owners using or occupying the dwelling sign the mortgage; and

(iv) The loan does not exceed the portion of market value of the property represented by the interests of the owners who sign the mortgage.

(3) *Life estates.* Security on a life estate ownership interest may exclude mortgaging the remaindermen's interests when:

(i) One or more of the remaindermen are not legally competent, cannot be located, or the remainder rights are divided among such a large number of remaindermen that it is not practical to obtain the signatures of all remaindermen;

(ii) The interests excluded do not represent more than 50 percent of all remainder interests;

(iii) All legally competent remaindermen using or occupying the dwelling sign the mortgage; and

(iv) The loan does not exceed the portion of market value of the property represented by the interests of the remaindermen who sign the mortgage.

(c) *Note only.* Loans of less than $2,500 may be unsecured. In such cases, only a promissory note need be obtained.

(d) *Repayment agreement.* (1) Grant recipients will be required to sign a repayment agreement (See Exhibit A of this subpart) which requires that if the property is sold by the grantee or the grantee's heirs or estate before the end of a three-year period, the full amount of the grant will be repaid to the Government. When ownership is a life estate interest, or an undivided ownership interest in the property, all co-owners living or planning to live in the household must sign the repayment agreement.

(2) In the event the property is sold before the expiration of the three-year period, the County Supervisor will service the account to the extent possible and practical, to protect the Government's interest and promote FmHA's recovery of grant funds.

[54 FR 14634, Apr. 12, 1989]

§ 1944.462 Rates and terms.

(a) The interest rate for all section 504 loans is one (1) percent per annum.

(b) Loan terms will not exceed 20 years and should be based on the borrower's repayment ability. Loans made in combination with grants should be amortized for 20 years, thereby maximizing the loan amount while minimizing the grant amount.

[54 FR 14635, Apr. 12, 1989]

§ 1944.463 Technical services.

(a) *Planning and performing development work.* Cost estimates or bid prices for the removal of health or safety hazards will be based on the list of essential repairs prepared by the FmHA representative after an inspection visit of the property. Exhibit B of this subpart or a similar format will be used to submit bids or cost estimates. Borrower-method construction dockets will contain written cost estimates describing materials and specifications with a complete cost breakdown on materials and labor for each item of development. For development work covered by contract, Form FmHA

1924-6, "Construction Contract", and Form FmHA 1924-2, "Description of Materials," will be used. In the case of substantial rehabilitation or new construction, Form FmHA 1924-19, "Builder's Warranty," is required.

(1) Specifications of materials must include details such as quantity, quality, sizes, grades, styles, model numbers, etc., as appropriate. Each item developed must be described specific enough to clearly identify the work and material to be furnished.

(2) Contractors, builders, or tradespersons must be competent to perform the specified development work. All development work will be in accordance with § 1924.6 of Subpart A of Part 1924 of this chapter.

(b) *Development plans.* The County Supervisor will prepare Form FmHA 1924-1, "Development Plan," according to § 1924.5(b) of Subpart A of Part 1924 of this chapter.

(c) *Inspections.* In addition to the initial property inspection, the authorized FmHA representative will make development inspections of work in place as follows:

(1) On new construction, such as room additions, make inspections in compliance with § 1924.9 of Subpart A of Part 1924 of this chapter.

(2) Make a final inspection on individual major items of development before issuing payment.

(3) Make a final inspection of all section 504 loan and grant development work before payment-in-full.

(4) Record all development inspections of Form FmHA 1924-12, "Inspection Report."

(d) *Appraisal.* An appraisal of the real estate or leasehold interest in required when the total indebtedness (including land sale contracts) is more than $7,500. When an appraisal is not made, the County Supervisor will document the estimated market value of the property in the case file.

(1) On a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, an abbreviated appraisal will be made in accordance with Subpart C of Part 1922 of this chapter using the comparable sales data approach only. A small farm for the purpose of this subpart is a farm as defined in § 1944.2(g) of Subpart A of this part which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

(2) On a farm tract or leasehold interest in a farm tract the appraisal will be made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(e) *Title clearance requirements.* (1) Total FmHA indebtedness of $7,500 or less, secured with a real estate mortgage, need not meet the title requirements of Part 1807 of this chapter (FmHA Instruction 427.1). In those cases the County Supervisor will use all practical means to verify that title and lien information is complete and accurate. In most cases, this can be accomplished by a search of the courthouse records.

(2) Total FmHA indebtedness of more than $7,500, secured with a real estate mortgage, title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

[54 FR 14635, Apr. 12, 1989]

§ 1944.464 Insurance requirements.

All applicants will be counseled and encouraged to have adequate hazard and flood insurance.

(a) *National flood insurance.* Repairs of less than $7,500 under this subpart are considered nonsubstantial improvements under the National Flood Insurance Program, and, therefore, flood insurance is not required.

(b) *Real property insurance.* Buildings on the property which are to be taken as security for assistance of more than $7,500 will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

§§ 1944.465—1944.466 [Reserved]

§ 1944.467 Processing applications.

(a) *Application.* Application for section 504 assistance will be made on Form FmHA 410-4, "Application for Rural Housing Loan Assistance (Non Farm Tract)," or Form FmHA 410-1, "Application for FmHA Services" which are available at local County Offices, and processed in accordance with Subpart A of Part 1910 of this chapter.

(1) When the request for assistance involves the removal of health or safety hazards the County Supervisor must visit the property within 30 days of receipt of the application to determine and identify what repairs are essential.

(2) The visit will be made prior to the applicant's eligibility determination, unless the applicant is clearly not eligible, and will be documented in the running case record identifying the existing hazards and essential repairs needed. Applications for assistance to remove health or safety hazards will receive priority processing.

(3) The County Supervisor must review with the applicant, and assure that the applicant signs Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts".

(b) *Family budget.* Form FmHA 1944-3, "Budget and/or Financial Statement", will be prepared for all section 504 applicants. When determining repayment ability, the budget will consider and account for items such as:

(1) Non-cash benefits (food stamps, scholarships, free clothing, meals on wheels, free transportation, etc.) which help reduce the applicant's budgeted expenses. Receipt of benefits will be properly documented, and the appropriate budgeted expenses will be reduced to reflect these benefits.

(2) Income from sources not used to determine adjusted income such as earnings from employment of minors or from a full-time student, who is neither the applicant nor spouse, foster care payments, or any similar income. These sources of income will be considered to the extent that they are used to offset budgeted expenses even though not included in "annual income".

(c) *Credit investigation.* Credit reports will be used for all loans of more than $7,500, and will be ordered at no cost to the applicant in accordance with Subpart B of Part 1910 (available in any FmHA office). Credit reports will not be used for grant assistance or loans of $7,500 or less.

(d) *Verification of income.* Income from employment will be verified by use of Form FmHA 1910-5, "Request for Verification of Employment". Income from Social Security (SS), Supplemental Security Income (SSI), welfare, pension and other similar sources will be verified by the most convenient method for reasonable accuracy.

(e) *Cost estimates.* Written cost estimates will be required as outlined in § 1944.463 of this subpart for all work to be performed. If, in the judgment of the County Supervisor the cost estimates are not competitive, additional cost estimates will be obtained. All cost estimates will be prepared and submitted according to § 1944.463(a) of this subpart.

(f) *Use of packagers.* Governmental entities or non-profit groups, such as churches, civic organizations, and Community Action Programs (CAP), etc., may package section 504 loan and grant applications. Each County Supervisor should actively seek the assistance of these organizations and provide adequate orientation and training concerning the responsibilities of a packager and the information required to package applications. See Exhibit C of this subpart (available in any FmHA office).

(g) *Determination of eligibility.* Eligibility for all section 504 loan and grant applicants will be determined under § 1944.458 of this subpart.

(h) *Notification.* Give notification of eligibility or adverse action to all applicants under § 1910.6 of Subpart A of Part 1910 of this chapter. Adverse actions will be processed under Subpart B of Part 1900 of this chapter.

[54 FR 14635, Apr. 12, 1989, as amended at 54 FR 29332, July 12, 1989]

§ 1944.468 Loan or grant approval.

(a) Section 504 loans or grants will be approved in accordance with Subpart A of Part 1901 of this chapter.

(b) The loan/grant approving official is responsible for reviewing the case file to determine that the proposed loan/grant complies with established policies and regulations, and that funds are available. Income and financial information used in eligibility determinations or loan/grant approvals must not be over 90 days old.

(c) At loan approval, the loan/grant approving official will prepare Forms FmHA 1940-1, "Request for Obligation of Funds," and 1944-2, "Single Family Housing Fund Analysis," and complete Form FmHA 1940-41, "Truth in Lending Disclosure Statement," using the actual terms of the transaction, and deliver it to the applicant. For transactions that are subject to cancellation, all property owners with the right to cancel will receive Form FmHA 1940-43, "Notice of Right to Cancel."

[54 FR 14636, Apr. 12, 1989]

§ 1944.469 Loan closing or grant settlement.

All grants and loans of $7,500 or less may be closed or settled by the County Supervisor or designee.

(a) *Effective date of loan closing or grant settlement.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases, the loan and/or grant is closed or settled when the promissory note or repayment agreement and any other required instrument is executed by the borrower/grantee.

(b) *Promissory note.* Form FmHA 1940-16, "Promissory Note," will be used for each loan made under this subpart. The note will be prepared and signed according to Part 1807 of this chapter (FmHA Instruction 427.1), including co-signers when appropriate. Each promissory note will be prepared for monthly payment.

(c) *Repayment agreement.* Exhibit A of this subpart, prepared in original and one copy, will be used for grant assistance. The original signed document will be retained in position 2 of the County Office case file, and a copy given to the grantee.

(d) *Mortgage.* Form FmHA 427-1, "Real Estate Mortgage for (*State*) ," will be used for each loan to be secured by a real estate mortgage. Each change made in the text by deletion, substitution or addition (excluding filling in the blanks) will be initialed in the margin by each person signing the mortgage and by the FmHA official making the change. Mortgages for loans on leasehold interests will be taken according to § 1944.18(b)(5) and § 1944.15(a)(5) (iv) and (v) of Subpart A of this part. For loans secured by a real estate mortgage subject to the right to cancel, Form FmHA 1940-43 will be given at closing to all entitled individuals according to Subpart I of Part 1940 of this chapter.

(e) *Supervised bank accounts.* A supervised bank account will be established in accordance with Subpart A of Part 1902 of this chapter, unless all the proceeds are disbursed to a supplier or contractor at closing. Funds from other sources deposited in supervised bank accounts will be accounted for by using columns 5 through 14 of Form FmHA 402-2, "Statement of Deposits and Withdrawals."

(f) *Disbursement of funds.* Loan funds secured by a real estate mortgage may not be disbursed until the right to cancel time period has expired. Funds will be disbursed as follows:

(1) Payments for work completed will be in accordance with § 1924.6 of Subpart A of Part 1924 of this chapter.

(2) Funds deposited in supervised bank accounts will be disbursed in the following order of priority:

(i) Applicant contribution;

(ii) Funds from sources other than FmHA;

(iii) FmHA section 504 loan funds.

(iv) FmHA section 504 grant funds.

(g) *Unused funds.* Unused section 504 grant funds will be handled as follows:

(1) When all planned development has been completed, remaining funds may be used for any additional authorized purposes, as agreed upon by the recipient and FmHA. If no such agreement can be reached, the funds will be returned to FmHA as prescribed in FmHA Instruction 1951-B.

(2) The funds also will be returned to the Finance Office when:

(i) All planned development cannot be completed because the contractor is unable or unwilling to do so and the recipient—even with the assistance of the County Supervisor—is unable to obtain another contractor; or

(ii) the purpose of the loan/grant cannot be accomplished because the borrower/grantee no longer resides in the dwelling.

(3) Funds will be returned to Finance Office in the following manner:

(i) Any funds returned shall first be applied to reducing a grant. The collecting office will enter payment code 21 (other) on Form FmHA 451-2, with a brief explanation ("Recovery of Section 504 Housing Repairs Grants").

(ii) If a grant was not involved or the amount of any grant has already been returned, then remaining funds shall be returned to the Finance Office and applied to the borrower's loan account as a refund.

(h) *Deceased borrower/grantee.* (1) When a borrower/grantee dies prior to disbursement of funds for development work performed, payment may be authorized when:

(i) There is evidence the recipient or their authorized representative accepted the work as complete and satisfactory, and

(ii) An inspection of the development work is completed by an authorized FmHA representative.

(2) When a loan is secured by a real estate mortgage, the State Director may withdraw funds to pay commitments for goods delivered or services performed, in accordance with §1902.15(d)(1)(iii) of Subpart A of Part 1902 of this chapter.

(3) In any other instance not covered by paragraphs (1) or (2), the funds will be returned to Finance Office.

[54 FR 14636, Apr. 12, 1989, as amended at 54 FR 39728, Sept. 28, 1989]

§§ 1944.470—1944.471 [Reserved]

§ 1944.472 Subsequent section 504 loans and/or grants.

Subsequent section 504 loans or grants may be made for the same purposes and under the same conditions and limitations as initial section 504 loans and grants.

[54 FR 14637, Apr. 12, 1989]

§ 1944.473 Unauthorized loans and/or grants.

Unauthorized loans and/or grants are those where it is determined the recipient was not eligible for the assistance received or where the loan and/or grant was approved for unauthorized purposes. Cases of these types will be serviced according to Subpart M of Part of 1951 of this chapter.

[54 FR 14637, Apr. 12, 1989]

§ 1944.474 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Assistant Administrator, Housing. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

[54 FR 14637, Apr. 12, 1989]

§§ 1944.475—1944.499 [Reserved]

§ 1944.500 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0062.

[54 FR 14637, Apr. 12, 1989]

EXHIBITS TO SUBPART J

EXHIBIT A—SECTION 504 REPAYMENT AGREEMENT

I/we the undersigned, hereby agree not to sell the property located at ________ being repaired with grant funds provided by the Farmers Home Administration for a period of three years from the date of this agreement. Should I/we sell the above-described property within three years, I/we agree to repay to the Farmers Home Administration, at the time of the sale, the full amount of the grant, which is $____. I/we further agree that if within three years from the date of this agreement the property is sold by either my estate or my heirs, the person or estate selling the property will repay the grant to FmHA.

____

(Grantee)

____

(Grantee)

____

(Date)

____

(Representative, Farmers Home Administration)

____

(Date)

[54 FR 14637, Apr. 12, 1989]

EXHIBIT B—COST ESTIMATE OR BID

COST ESTIMATE OR BID

(Home owner) ____________________
(Address) ____________________
(Contract or bidder)____________________
(Address) ____________________

Development	Material specification	Material (dollars)	Labor (dollars)
Subtotals		$	$
Totals		$	$

Date:____________________
(Contractor Bidder/Signature) __________

[47 FR 40400, Sept. 14, 1982]

EXHIBIT C

Exhibit C (Guidance on Packaging Applications for Section 504 Rural Housing Assistance) is not published in the CFR or the Federal Register but is available in any FmHA office.

Subpart K—Technical and Supervisory Assistance Grants

SOURCE: 44 FR 36891, June 22, 1979, unless otherwise noted.

§ 1944.501 General.

(a) This subpart sets forth the policies and procedures for making grants under Section 525(a) of the Housing Act of 1949, 42 U.S.C. 1490e(a), to provide funds to eligible applicants to conduct programs of technical and supervisory assistance (TSA) for low-income rural residents to obtain and/or maintain occupancy of adequate housing. This financial assistance may pay part or all of the cost of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from federal, state, and local programs in rural areas.

(b) The Farmers Home Administration (FmHA) will provide technical and supervisory grant assistance to applicants without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap.

§ 1944.502 Policy.

(a) The policy of the FmHA is to provide Technical and Supervisory Assistance to eligible applicants to do the following:

(1) Provide homeownership and financial counseling to reduce both the potential for delinquency by loan applicants and the level of payment delinquency by present FmHA housing loan borrowers; and

(2) Facilitate the delivery of housing programs to serve the most needy low-income families in rural areas of greatest need for housing.

(b) FmHA intends to fund projects which include counseling and delivery of housing programs.

(c) State Directors are given a strong role in the selection of grantees so this program can complement FmHA's policies of targeting FmHA resources to areas of greatest need within their States.

(d) FmHA expects grant recipients to implement a TSA program and not to use TSA funds to prepare housing plans and strategies except as necessary to accomplish the specific objectives of the TSA project.

§ 1944.503 Objectives.

The objectives of the TSA Grant Program are to assist low-income rural families in obtaining adequate housing to meet their family's needs and/or to provide the necessary guidance to promote their continued occupancy of a-ready adequate housing. These objectives will be accomplished through the establishment or support of housing delivery and counseling projects run by eligible applicants. This program is intended to make use of any available housing program which provides the low-income rural resident access to adquate rental properties or homeownership.

§§ 1944.504—1944.505 [Reserved]

§ 1944.506 Definitions.

References in this subpart to County, District, State, National and Finance Offices and to County Supervisor, District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this Subpart have the following meanings:

(a) *Adequate housing.* A housing unit of adequate size and design to meet the specific needs of low-income families and the requirements governing the particular housing program providing the services or financial assistance.

(b) *Applicant or grantee.* Any eligible organization which applies for or receives TSA funds under a grant agreement.

(c) *Grant agreement.* The contract between FmHA and the applicant which sets forth the terms and conditions under which TSA funds will be made available.

(d) *Low-income family.* Any household, including those with one member, whose adjusted annual income, computed in accordance with §§ 1944.5 and 1944.6 of Part 1944, Subpart A, of this chapter, does not exceed the maximum low-income limit specified in Exhibit C of Subpart A of Part 1944 (available in any FmHA office).

(e) *Organization.* (1) A State or political subdivision or public nonprofit corporation (including Indian Tribes or tribal corporations) authorized to receive and administer TSA funds; or

(2) A private nonprofit corporation with local representation from the area being served that is owned and controlled by private persons or interests and is organized and operated by private persons or interests for purposes other than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members.

(f) *Rural area.* The definition in § 1944.10 of Part 1944, Subpart A applies.

(g) *Sponsored applicant.* An eligible applicant which has a commitment of financial and/or technical assistance to apply for the TSA program and to implement such a program from a state, county, municipality, or other governmental entity or public body.

(h) *Supervisory assistance.* Any type of assistance to low-income families which will assist those families in meeting the eligibility requirements for, or the financial and managerial responsibilities of, homeownership or tenancy in an adequate housing unit. Such assistance must include, but is not limited to, the following activities:

(1) Assisting individual FmHA borrowers with financial problems to overcome delinquency and/or prevent foreclosure and assisting new low-income applicants to avoid financial problems through:

(i) Financial and budget counseling including advice on debt levels, credit purchases, consumer and cost awareness, debt adjustment procedures, and availablity of other financial counseling services;

(ii) Monitoring payment of taxes and insurance;

(iii) Home maintenance and managment; and

(iv) Other counseling based on the needs of the low-income families.

(2) Contracting and assisting low-income families in need of adequate housing by:

(i) Implementing an organized outreach program using available media and personal contacts;

(ii) Explaining available housing programs and alternatives to increase the awareness of low-income families and to educate the community as to the benefits which can accrue from improved housing;

(iii) Assisting low-income families locate adquate housing;

(iv) Providing construction supervision, training, and guidance to low-income families not involved in mutual self-help projects who are otherwise being assisted by the TSA project;

(v) Organizing local public or private nonprofit groups willing to provide adequate housing for low-income families; and

(vi) Providing assistance to families and organizations in processing housing loan and/or grant applications generated by the TSA program, including developing and packaging such applications for new construction, rehabilitation, or repair to serve low-income families.

(i) *Technical assistance.* Any specific expertise necessary to carry out housing efforts by or for low-income families to improve the quantity and/or quality of housing available to meet their needs. Such assistance should be specifically related to the supervisory assistance provided by the project, and may include, as appropriate, the following activities:

(1) Develop, or assist eligible applicants to develop, multi-housing loan and/or grant applications for new construction, rehabilitation, or repair to serve low-income families.

(2) Market surveys, engineering studies, cost estimates, and feasibility studies related to applications for housing assistance to meet the specific needs of the low-income families assisted under the TSA program.

[44 FR 36891, June 22, 1979, as amended at 46 FR 61990, Dec. 21, 1981; 50 FR 39967, Oct. 1, 1985; 51 FR 6393, Feb. 26, 1986]

§§ 1944.507—1944.509 [Reserved]

§ 1944.510 Applicant eligibility.

To be eligible to receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.506(e).

(b) Have the financial, legal, administrative, and operational capacity to assume and carry out the responsibilities imposed by the grant agreement. To meet this requirement of actual capacity, it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of low-income rural housing development and counseling, or other business management or administrative experience which indicates an ability to provide responsible technical and supervisory assistance; or

(2) Be assisted by an organization which has such background experience and ability and which agrees in writing that it will provide, without charge, the assistance the applicant will need to carry out its responsibilities.

(c) Legally obligate itself to administer TSA funds, provide an adequate accounting of the expenditure of such funds, and comply with the grant agreement and FmHA regulations;

(d) Demonstrate an understanding of the needs of low-income rural families;

(e) Have the ability and willingness to work within established guidelines; and

(f) If the applicant is engaged in or plans to become engaged in any other activities, it must be able to provide sufficient evidence and documentation that it has adequate resources, including financial resources, to carry on any other programs or activities to which it is committed without jeopardizing the success and effectiveness of its TSA project.

§ 1944.511 [Reserved]

§ 1944.512 Authorized representative of the applicant.

FmHA will deal only with authorized representatives designed by the applicant. The authorized representatives must have no pecuniary interest in any of the following as they would relate in any way to the TSA grant: the award of any engineering, architectural, management, administration, or construction contracts; purchase of the furnishings, fixtures or equipment; or purchase and/or development of land.

NOTE: (FmHA has designated the District Office as the primary point of contact for all matters relating to the TSA program and as the office responsbile for the administration of approved TSA projects.

§ 1944.513 [Reserved]

§ 1944.514 Comprehensive TSA grant projects.

(a) The rural area to be covered by the TSA project must be realistically serviceable by the applicant in terms of funding resources, manpower, and distances and generally should be limited to one to four counties within the service area of one District Office.

(b) Consideration of the following items may assist applicants develop TSA projects which meet the needs of low-income families in the proposed TSA service area: present population distribution, projected population growth or decline, the amount of inadequate housing, economic conditions, and trends of the rural areas concerned, and any other factors affecting the quantity and quality of housing currently available or planned for the area. Consideration must also be given to the needs and desires of the community; the financial and social condition of the individuals within the community; the needs of areas with a concentration of low-income minority families and the needs of FmHA borrowers who are delinquent in their housing loan payments; the availability of supporting services such as water, sewerage, health and educational facilities, transportation, recreational and community facilities, and the types of housing facilities and services presently available or planned to which the low-income families have or will have ready access.

(c) Each TSA applicant should consider the alternatives available to provide needed housing facilities and services for the area. Consideration should also be given to the recommendations and services available from local, state, federal governmental entities, and from private agencies and individuals.

(1) In no case should the TSA project deliberately conflict with or duplicate housing studies, plans, projects, or any other housing related activities in a rural area unless documentation shows these activities do not meet the needs of low-income families.

(2) Each TSA project should be coordinated to the extent possible with any comprehensive or special purpose plans and projects affecting low-income housing in the area.

(3) To the fullest extent possible, TSA projects should be coordinated with any housing-related activities currently being carried out in the area.

(d) TSA applicants must coordinate their proposals with the appropriate County and District Offices to be fully familiar with the needs of those offices and of the low-income families currently served by the County Offices.

§ 1944.515 [Reserved]

§ 1944.516 Grant purposes.

Grant funds are to be used for a housing delivery system and counseling program to include a comprehensive program of technical and supervisory assistance as set forth in the grant agreement and any other special conditions as required by FmHA. Uses of grant funds may include, but are not limited to:

(a) The development and implementation of a program of technical and supervisory assistance as defined in § 1944.506 (h) and (i).

(b) Payment of reasonable salaries of professional, technical, and clerical staff actively assisting in the delivery of the TSA project.

(c) Payment of necessary and reasonable office expenses such as office supplies and office rental, office utilities, telephone services, and office equipment rental.

(d) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, audit reports, travel to and attendance at FmHA approved training sessions, and the employer's share of Social Security and health benefits. Payments to private retirement funds are prohibited unless prior written authorization is obtained from the Administrator.

(e) Payment of reasonable fees for necessary training of grantee personnel. This may include the cost of travel and per diem to attend regional training sessions when authorized by the State Director.

(f) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific TSA grant which were anticipated in the individual TSA grant proposal and which have been included as eligible expenses at the time of grant approval.

§ 1944.517 [Reserved]

§ 1944.518 Term of grant.

TSA projects will be funded under one Grant Agreement for two years commencing on the date of execution of the Agreement by the State Director.

§ 1944.519 [Reserved]

§ 1944.520 Ineligible activities.

(a) Grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of structures or acquisition of land, vehicles, or equipment.

(2) Replacement of or substitution for any financial support which would be available from any other source.

(3) Duplication of current services in conflict with the requirements of § 1944.514(c).

(4) Hiring personnel to perform construction.

(5) Buying property of any kind from families receiving technical or supervisory assistance from the grantee under the terms of the TSA grant.

(6) Paying for or reimbursing the grantee for any expenses or debts incurred before FmHA executes the grant agreement.

(7) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving technical and supervisory assistance.

(8) Any type of political activities.

(9) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs, legislative expenses and any excess of cost from other grant agreements.

(b) Advice and assistance may be obtained from the National Office where ineligible costs are proposed as part of the TSA project or where a proposed cost appears ineligible.

(c) The grantee may not charge fees or accept compensation or gratuities from TSA recipients for the grantee's assistance under this program.

§ 1944.521 [Reserved]

§ 1944.522 Equal opportunity requirements.

The policies and regulations contained in Subpart E of Part 1901 of this chapter apply to grants made under this subpart.

§ 1944.523 Other administrative requirements.

The following policies and regulations apply to grants made under this subpart:

(a) The policies and regulations contained in Subpart F of Part 1901 of this chapter regarding historical and archaeological properties.

(b) The policies and regulations contained in Subpart G of Part 1940 of this chapter regarding Environmental Assessments.

[44 FR 36891, June 22, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984]

§ 1944.524 [Reserved]

§ 1944.525 Targeting of TSA funds to States.

(a) The Administrator will determine, based on the most current available information (generally that information used to determine the allocation to States of FmHA housing loan funds), those States with the highest degree of substandard housing and persons in poverty in rural areas eligible to receive FmHA housing assistance. The Administrator will distribute a portion of the available funds for TSA to these States, leaving the balance available for national competition.

(b) The Administrator will provide annual notice through a published Notice on the distribution of appropriated TSA funds, the number of preapplications to be submitted to the National Office from the State Offices and the maximum grant amount per project.

§ 1944.526 Preapplication procedure.

(a) *Preapplication submission.* (1) All applicants will file an original and two copies of SF 424.1, "Application for Federal Assistance (For Non-con struction)," and supporting information detailed below with the appropriate District Office serving the proposed TSA area. A preapplication packet including SF 424.1 is availabie in all District and State Offices.

(i) The applicant will provide informational copies of the preapplication to the County Supervisor(s) of the area to be served by the TSA project at the time of submittal to the appropriate District Office.

(ii) If the TSA area encompasses more than one District Office, the preapplication will be filed at the District Office which serves the area in which the grantee will provide the greatest amount of TSA efforts. Additional informational copies of the preapplication will be sent by the applicant to the other affected District Office(s).

(2) All preapplications shall be accompanied by the following information which will be used to determine the applicant's eligibility to undertake a TSA program and to determine whether the applicant might be funded.

(i) A narrative presentation of the applicant's proposed TSA program, including:

(A) The technical and supervisory assistance to be provided;

(B) The time schedule for implementing the program;

(C) The staffing pattern to execute the program and salary range for each position, existing and proposed;

(D) The estimated number of low-income and low-income minority families the applicant will assist in obtaining affordable adequate housing;

(E) The estimated number of FmHA borrowers who are delinquent or being foreclosed that the applicant will assist in resolving their financial problems relating to their delinquency;

(F) The estimated number of households which will be assisted in obtaining adequate housing in the TSA area through new construction and/or rehabilitation;

(G) Annual estimated budget for each of the two years based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, contracts, and other costs categories, detailing those costs for which the grantee proposes to use the TSA grant separately from non-TSA resources, if any;

(H) The accounting system to be used;

(I) The method of evaluation proposed to be used by the applicant to determine the effectiveness of its program;

(J) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both TSA activities and housing development and/or supporting facilities; and

(K) Any other information necessary to explain the manner of delivering the TSA assistance proposed.

(ii) Complete information about the applicant's previous experience and capacity to carry out the objectives of the proposed TSA program;

(iii) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers; and, if another organization is a member of the applicant-organization, its name, address, and principal business.

(iv) For a private nonprofit entity, a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by that organization.

(v) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of technical and supervisory assistance being proposed, the method of evaluation to be use by the applicant in determining the effectiveness of its efforts (as related to paragraph (a)(2)(i) of this section), and any other information necessary to specifically address the selection criteria in § 1944.529.

(vi) A list of other activities the applicant is engaged in and expects to continue and a statement as to any other funding and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the TSA grant agreement.

(3) An applicant should submit written statements from the county, parish, or township governments of the area affected that the project is beneficial and does not duplicate current activities. If the local governmental units will not provide such statements, the applicant will prepare and include with its preapplication a summary of its analysis of alternatives considered under § 1944.514(c). However, Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of the concurrence of the county governments.

(4) Sponsored applicants should submit a written commitment for financial and/or technical assistance from their sponsoring entity.

(5) An original and one copy of Form FmHA 1940-20, "Request for Environmental Information."

(b) *District Office processing of preapplications.* (1) The District Director with whom the preapplication is filed will review the preapplication, SF 424.1, and any other supporting information from the applicant. The District Director will also:

(i) Complete any required environmental review procedures as specified in Subpart G of Part 1940 of this chapter and attach to the application.

(ii) Prepare a review of the project in accordance with Subpart F of Part 1901 of this chapter and attach it to the preapplication.

(2) All District Directors and County Supervisors receiving informational copies of the preapplication should submit their comments within five working days to the District Director with whom the preapplication if filed.

(3) The original and one copy of the preapplication, together with the District Director's written comments and recommendations, reflecting the criteria used in § 1944.529 and Exhibit C of this subpart, will be forwarded to the State Director within ten working days of receipt of the preapplication.

(c) *State Office processing of preapplications.* (1) Upon receipt of a preapplication, the State Office will review and evaluate the preapplication and accompanying documents in accordance with the project selection criteria of § 1944.529 and Exhibit B of this subpart. The State Office will also:

(i) Make a determination on Form FmHA 1940-21, Form FmHA 1940-22 or Class II Environmental Assessment in accordance with Subpart G of Part 1940 of this chapter.

(ii) Prepare an historical and archaeological assessment in accordance with § 1901.255 (b) and (c) of Subpart F of Part 1901 of this chapter.

(2) Within 30 days of the closing date for receipt of preapplications as published in the Federal Register, the State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant(s), including any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" (See FmHA Instruction 1940-J, available in any FmHA Office), and the comments and recommendations of the County Office(s), District Office(s), and the State Office. The State Office will submit the preapplication(s) in accordance with the annual notice provided for by § 1944.525 (b) of this subpart.

(3) Concurrently the State Office will send a copy of the selected applicant's(s') SF 424.1 and relevant documents to the Regional Office of the General Counsel (OGC) requesting a legal determination be made of

the applicant's legal existence and authority to conduct the proposed program of technical and supervisory assistance.

(4) The State Office will notify other applicants that their preapplications will not selected and advise them of their appeal rights under Subpart B of Part 1900 of this chapter.

(d) *National Office processing of preapplications.* (1) Preapplications for this program from those States targeted under § 1944.525 will be reviewed by the National Office for completeness and compliance with this subpart. If a grant is recommended, the National Office will return the preapplication(s) with any comments and recommendations to the State Office and advise that office to proceed with the issuance of Form AD-622, "Notice of Preapplication Review Action," and to request the applicant to prepare SF 424.1 for submission to the District Office. If a grant is not recommended, the National Office will advise the State Office of action to take.

(2) Preapplications from States which are not targeted in accordance with § 1944.525 will be reviewed for completeness and compliance with this subpart and then evaluated in accordance with the project selection criteria of § 1944.529. Those preapplications which are selected, and for which funds are available, will be returned to the appropriate State Office with any National Office comments and recommendations. The State Office will be advised to proceed with the issuance of SF 424.1 and to request the applicant to prepare Form AD-623 for submission to the District Office as detailed in § 1944.531.

(3) Those preapplications for which funds are not available will be returned to the appropriate State Office which will notify each applicant and advise the applicant of its appeal rights under Subpart B of Part 1900 of this chapter.

(4) State Directors will be advised of the National Office's action on their selected preapplication within 30 days of receipt of all preapplications.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990; 55 FR 50081, Dec. 4, 1990]

§ 1944.527 [Reserved]

§ 1944.528 Preapplication submission deadline.

Dates governing the review and selection of TSA grant preapplications will be published annually in the Federal Register. Preapplications received after that time will not be considered for funding. For use of fiscal year 1979 funds, the deadline for submission of preapplications will be 45 calendar days from date of publication of final regulations.

§ 1944.529 Project selection.

(a) Projects must meet the following criteria:

(1) Provide a program of supervisory assistance as defined in § 1944.506(h), and

(2) Serve areas with a concentration of substandard housing and low-income and low-income minority households.

(b) In addition to the items listed in paragraph (a) of this section, the following criteria will be considered in the selection of grant recipients:

(1) The extent to which the project serves areas with concentrations of FmHA single family housing loan borrowers who are delinquent in their housing loan payments and/or threatened with foreclosure.

(2) The capability and past performance demonstrated by the applicant in administering its programs.

(3) The effectiveness of the current efforts by the applicant to assist low-income families in obtaining adequate housing.

(4) The extent to which the project will provide or increase the delivery of housing resources to low-income and low-income minority families in the area who are not currently occupying adequate housing.

(5) The services the applicant will provide that are not presently available to assist low-income families in obtaining or maintaining occupancy of adequate housing and the extent of duplication of technical and supervisory assistance activities currently provided for low-income families.

(6) The extent of citizen and local government participation and involvement in the development of the preapplication and project.

(7) The extent of planned coordination with other Federal, State, or local technical and/or supervisory assistance programs.

(8) The extent to which the project will make use of other financial and contributions-in-kind resources for both technical and supervisory assistance and housing development and supporting facilities.

(9) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

(10) The extent to which the project will be cost effective, including but not limited to the ratio of personnel to be hired by the applicant to the cost of the project, the cost, both direct and indirect, per person benefiting from the project, and the expected benefits to low-income families from the project.

(11) The extent to which the proposed staff and salary ranges, including qualifications, experience, proposed hiring schedule and availability of any prospective employees, will meet the objectives of the proposed TSA program.

(12) The anticipated capacity of the applicant to implement the proposed time schedule for starting and completing the TSA program and each phase thereof.

(13) The adequacy of the records and practices, including personnel procedures and practices, that will be established and maintained by the applicant during the term of the agreement.

(c) Among the projects proposed by private nonprofit entities, preference will be given to sponsored applicants.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983]

§ 1944.530 [Reserved]

§ 1944.531 Applications submission.

(a) Upon notification that the applicant has been tentatively selected for funding, the State Office will forward to the applicant a signed Form AD-622 and provide SF 424.1 with instructions to the applicant for preparation of an application.

(b) Upon receipt of Form AD-622, the applicant will submit an application in an original and 2 copies on SF 424.1, and provide whatever additional information is requested to the District Office within 30 days.

(c) Upon receipt of an application on SF 424.1 by the District Office, a docket shall be assembled which will include the following:

(1) Form SF 424.1 and the information submitted in accordance with § 1944.526(a)(2).

(2) Form AD-622.

(3) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

(4) SF 424.1.

(5) OGC legal determination made pursuant to § 1944.526(c)(3).

(6) Grant Agreement.

(7) Form FmHA 1940-1, "Request for Obligation of Funds."

(8) Form FmHA 400-1, "Equal Opportunity Agreement."

(9) Form FmHA 400-4, "Assurance Agreement."

(10) Form FmHA 1940-20, "Request for Environmental Information."

(11) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," Form FmHA 1940-21, "Environmental Assessment for Class I Actions" or Exhibit H, Subpart G of Part 1940 entitled, Environmental Assessment for Class II Actions.

(12) The historical and archaeological assessment.

(13) The detailed budget for the agreement period based upon the needs outlined in the proposal and the comments and recommendations by FmHA.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503 and 13504, April 11, 1990]

§ 1944.532 [Reserved]

§ 1944.533 Grant approval and announcement.

Grant approval and announcement will be accomplished under the following procedure. The Administrator may modify this section if necessary to obligate funds in a timely and efficient manner.

(a) The District Office will review the docket to determine whether the application complies with these regulations and is consistent with the information and supporting documents submitted with the preapplication and any comments and recommendations of the State and National Offices.

(b) If major problems occur during the development of the docket, the District Office will call upon the State Office for assistance.

(c) If a grant is recommended, Form FmHA 1940-1 and the Grant Agreement will be prepared by the District Office and forwarded to the applicant for signature as authorized in its authorizing resolution. Exhibit A, Grant Agreement, is a part of these regulations.

(d) When Form FmHA 1940-1 and the Grant Agreement are received from the applicant and signed by the applicant, the docket will be forwarded to the State Director.

(e) Exhibit A to FmHA Instruction 2015-C (available in any FmHA office) will be prepared and sent to the Director of Information in the National Office.

(f) If the State Director approves the project, the following actions will be taken in the order listed:

(1) The State Director, or the State Director's designee, will telephone the Finance Office Check Request Station requesting that grant funds for a particular project be obligated. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, the required information from Form FmHA 1940-1 will be furnished to the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of the request.

(2) The individual making the request will record the date and time of the request and sign Section 37 of Form FmHA 1940-1.

(i) The Finance Office will notify the State Office by telephone when funds are reserved and of the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available. The obligation date will be six working days from the date the request for obligation is processed.

(ii) The Finance Office will terminally process telephone obligation requests. Those requests received prior to 2:30 p.m. Central Time will be processed on the date of the request. Those requests received after 2:30 p.m., to the extent possible, will be processed on the day received; however, there may be instances where the obligation will be processed on the next working day.

(iii) The Finance Office will mail Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," to the State Director, confirming the reservation of funds with the obligation date inserted as required by Item 9 on the Forms Manual Insert (FMI) for Form FmHA 440-57.

(iv) Form FmHA 1940-1 will not be mailed to the Finance Office.

(3) The State Director will notify the Director of Information in the National Office with a recommendation that the project announcement be released.

(4) An executed form FmHA 1940-1 will be sent to the applicant along with an executed copy of the Grant Agreement and scope of work on or before the date funds are obligated.

(i) The actual date of applicant notification will be entered on the original of Form FmHA 1940-1 and the original of the form will be included as a permanent part of the file.

(ii) Standard Form 270, "Request for Advance or Reimbursement," will be sent to the applicant for completion and returned to FmHA.

(5) If it is determined that a project will not be funded or if major changes

in the scope of the project are made after release of the approval announcement, the State Director will notify the Administrator and the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail, giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement if the project will not be funded or of major changes in the project using the procedure similar to the announcement process. Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Administrator and the Director, LAPIS.

(6) Upon receipt from the grantee of a properly completed SF-270, Form FmHA 440-57 will be completed and the check request will be called to the Finance Office Check Request Station in accordance with the FMI for Form FmHA 440-57.

[44 FR 36891, June 22, 1979, as amended at 47 FR 36415, Aug. 20, 1982; 48 FR 30946, July 6, 1983; 55 FR 13504, Apr. 11, 1990]

§ 1944.534 [Reserved]

§ 1944.535 Cancellation of an approved grant.

(a) The District Director will prepare Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in an original and two copies (three copies if the technical and supervisory assistance (TSA) check has been received in the District Office from the Disbursing Office). Form FmHA 1940-10 will be sent to the State Director (original and two copies with the check if the Treasury check is being canceled) with the reasons for requesting cancellation.

(b) If the State Director approves the request for cancellation, he/she will forward the original request for cancellation (original and one copy of Form FmHA 1940-10 with the check if the Treasury check is being canceled) to the Finance Office. If the TSA check is received in the District Office, the District Director will return it to the Finance Office with an original and one copy of Form FmHA 1940-10.

(c) The District Director will notify the applicant of the cancellation and, unless the applicant requested the cancellation, its right to appeal in accordance with the FmHA Appeal Procedure contained in Subpart B of Part 1900 of this chapter.

[44 FR 36891, June 22, 1979, as amended at 47 FR 36415, Aug. 20, 1982]

§ 1944.536 Grant closing.

Closing is the process by which FmHA determines that applicable administrative actions have been completed and the Grant Agreement is signed. The Grant Agreement (Exhibit A) will be executed by the State Director at the time the Form FmHA 1940-1 and Grant Agreement is sent to the Grantee in accordance with § 1944.533 (f)(4). An executed original of the Grant Agreement shall be sent to the District Director and one copy to the grantee.

[44 FR 36891, June 22, 1979, as amended at 55 FR 13504, April 11, 1990]

§ 1944.537 [Reserved]

§ 1944.538 Extending and revising grant agreements.

(a) All requests extending the original grant agreement or revising the TSA program must be in writing. Such requests will be processed through the District Director. Any such requests will be processed in accordance with the processing procedure specified in § 1944.526 (b) and (c) of this subpart. The State Office will respond to the applicant within 30 days of receipt of the request in the State Office.

(b) An extension of a grant beyond the two year term may be granted by the State Director when:

(1) There are grant funds remaining and the grantee requests an extension at the end of the grant period.

(2) The grantee has demonstrated its ability to conduct a comprehensive program of technical and supervisory assistance in accordance with the terms of its grant agreement and in a manner satisfactory to FmHA.

(3) The grantee is likely to complete the goals outlined in the initial proposal.

(4) There is an unmet need to continue the delivery of the technical and supervisory assistance being provided by the grantee, and

(5) The District Director recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Upon approval of the extension, the State Director will authorize the District Director to amend the ending date of the grant agreement and revise the budgets, if necessary, on behalf of the Government.

(d) If the grant agreement must be revised and amended other than by extension, including any changes in the scope and objectives of the TSA program, the grantee will submit a revised budget and TSA program together with any information necessary to justify its requests. Such requests will be submitted to the State Director through the District Director.

(e) The State Office will advise the National Office of all requests to extend or modify the original grant agreement. Prior concurrence of the National Office is not required unless the State Director so desires, in which case the State Director will advise the applicant that the request has been forwarded to the National Office for concurrence. The State Director's recommendation will accompany such requests.

(f) Exhibit D to this subpart shall be executed upon approval of an extension of the grant period, or significant change in either the project budget or the objectives of the approved technical and supervisory activities.

(g) If extension or modification is not approved, the State Office will notify the applicant in writing of the decision and advise the applicant of the appeal procedures under Subpart B of Part 1900 of this chapter.

§ 1944.539 [Reserved]

§ 1944.540 Requesting TSA checks.

(a) The initial TSA check may cover the applicant's needs for the first calendar month. If the first calendar month is a partial month, the check will cover the needs for the partial month and the next whole month.

(b) The initial advance of TSA grant funds may not be requested simultaneously with the request for obligation of TSA grant funds. The initial advance must be requested on Form FmHA 440-57 in accordance with the FMI after it has been received from the Finance Office indicating that funds have been obligated.

(c) All advances will be requested only after receipt of Standard Form 270 from the grantee. The amount requested must be in accordance with the detailed budget, including amendments, as approved by FmHA. Standard Form 270 will not be submitted more frequently than once every 30 days. In no case will additional funds be advanced if the grantee fails to submit required reports or is in violation of the grant agreement.

§ 1944.541 Reporting requirements.

(a) Standard Form 269, "Financial Status Report," and a project performance report will be required of all grantees on a quarterly basis. All grantees shall submit an original and two copies of these reports to the District Director. The project performance reports will be submitted not later than January 15, April 15, July 15, and October 15 of each year.

(b) As part of the grantee's preapplication submission required by § 1944.526(a)(2)(i), the grantee established the objectives of its TSA program including the estimated number of low-income families to be assisted by the TSA program and established its method of evaluation to determine the effectiveness of its program. The project performance report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. Accordingly, the report should include, but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period, including:

(i) The number of low-income families assisted in improving their housing conditions or in obtaining affordable adequate housing.

(ii) The number of FmHA borrowers who were delinquent or being foreclosed who were assisted in resolving their financial problems.

(iii) The number of households assisted in obtaining adequate housing by the TSA program through new construction and/or rehabilitation.

(2) Reasons why, if established objectives are not met.

(3) Problems, delays, or adverse conditions which will materially affect attainment of the TSA grant objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation.

(4) Objectives established for the next reporting period, sufficiently detailed to identify the type of assistance to be provided, the number and type of families to be assisted, etc.

(c) These reports will be reviewed by the District Director to determine satisfactory progress. The District Director will work with the grantee to resolve any problems. The District Director will forward the original and one copy of the reports with any comments and recommendations to the State Director within ten working days of receipt.

(d) The State Director will review the reports, comments, and recommendations forwarded by the District Director within five working days of receipt.

(1) If the reports indicate satisfactory progress, the State Director will forward the original to the National Office with any comments or suggestions and return the remaining copy to the grantee through the District Director with a copy of the comments or recommendations.

(2) If the reports indicate unsatisfactory progress, the State Director will recommend appropriate action to resolve the indicated problem(s). The State Director has the discretion to not authorize further advances where the progress of the project is unsatisfactory. The State Director will notify the grantee through the District Director of a decision not to authorize further advances and advise the grantee of its appeal rights under Subpart B of Part 1900 of this chapter.

(3) A copy of the memorandum returning the unsatisfactory reports will be forwarded to the National Office together with the State Director's decision, comments and recommendations, if appropriate.

(e) The grantee will complete a final Standard Form 269 and a final performance report upon termination or expiration of the grant agreement.

§ 1944.542 [Reserved]

§ 1944.543 Grant monitoring.

Each grant will be monitored by FmHA to ensure that the grantee is complying with the terms of the grant and that the TSA project activity is completed as approved. Ordinarily, this will involve a review of quarterly and final reports by FmHA and review by the appropriate District Director.

§ 1944.544 [Reserved]

§ 1944.545 Additional grants.

An additional grant may be made to an applicant that has previously received a TSA grant and has achieved or nearly achieved the goals established for the previous grant by submitting a new proposal for TSA funds. The additional grant application will be processed as if it were an initial application. Upon approval, a new grant agreement will be required and the grant will be coded as an initial grant on Form FmHA 440-1.

§ 1944.546 [Reserved]

§ 1944.547 Management assistance.

The District Director will see that each TSA grantee receives management assistance to help achieve a successful program.

(a) TSA employees who will be contacting and assisting families will receive training in packaging single family housing and Rural Rental Housing loans when, or very shortly after, they are hired so that they can work effectively.

(b) TSA employees who will provide counseling, outreach, and other technical and supervisory assistance will receive training on FmHA policies procedures, and requirements appropriate to their positions and the type of assistance the grantee will provide at the outset of the grant.

(c) Training will be provided by FmHA employees and/or outside sources approved by FmHA when the technical and supervisory assistance involves rural housing programs other than FmHA programs. Appropriate training of TSA employees should be anticipated during the planning stages of the grant and the reasonable cost of such training included in the budget.

(d) The District Director, in cooperation with the appropriate County Supervisor(s), should coordinate the management assistance given to the TSA grantee in a manner which is timely and effective. This will require periodic meetings with the grantee to discuss problems being encountered and offer assistance in solving these problems; to discuss the budget, the effectiveness of the grant, and any other unusual circumstances affecting delivery of the proposed TSA services; to keep the grantee aware of procedural and policy changes, availability of funds, etc.; and to discuss any other matters affecting the availability of housing opportunities for low-income families.

(e) The District Director will advise the grantee of the options available to bring the delinquent borrowers' accounts current and advise the grantee that the appropriate County Supervisor retains all approval authority for any resolution of the delinquent accounts and all other authority currently available to remedy delinquent accounts.

§ 1944.548 Counseling consent by FmHA single family housing borrowers.

(a) Subsequent to execution of the TSA grant agreement, the County Supervisor(s) serving the TSA project area will contact the delinquent FmHA single family housing borrowers who appear to be in need of supervisory assistance as defined in § 1944.506(h)(1). Such contact will indicate the availability of the counseling services of the grantee and solicit the borrower's participation in the program. Exhibit E should be used in contacting and/or discussing counseling with the borrowers.

(b) Upon indication of the borrower's willingness to participate in the program by his or her signature on Exhibit E or similar letter or statement, the County Supervisor will make available to the grantee (at no cost) the borrower's FmHA loan history including the following information:

(1) Name, address, and telephone number;

(2) Status of the account including the amount of the loan, the repayment schedule, and the amount of the delinquency; and

(3) Other information needed for counseling purposes which may be provided in accordance with FmHA Instruction 2018-F.

§ 1944.549 Grant evaluation, closeout, suspension, and termination.

(a) Grant evaluation will be an ongoing activity performed by both the grantee and FmHA. The grantee will perform self-evaluations by preparing periodic project performance reports in accordance with § 1944.541. FmHA will also review all reports prepared and submitted by the grantee in accordance with the grant agreement and this part.

(b) Within forty-five (45) days after the grant ending date, the grantee will complete closeout procedures as specified in the grant agreement.

(c) The grant can also be terminated before the grant ending date for the causes specified in the grant agreement. No further grant funds will be disbursed when grant suspension or termination procedures have been initiated in accordance with the grant agreement.

§ 1944.550 [Reserved]

EXHIBITS TO SUBPART K

EXHIBIT A—GRANT AGREEMENT TECHNICAL AND SUPERVISORY ASSISTANCE

This Agreement dated ——— is between ——————— (name), ——————— (address), (Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA). The Grantor agrees to grant to Grantee a sum not to exceed $——— subject to the terms and conditions established by the Grantor: *Provided, however*, That the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The grantee may appeal this decision in accordance with the FmHA Appeal Procedure contained in Subpart B of Part 1900 of this chapter. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 525(a) of the Housing Act of 1949 for the purpose of providing funds to eligible nonprofit applicants (grantees) to pay part or all of the cost of developing, conducting, administering, or coordinating comprehensive programs of technical and supervisory assistance (TSA) which will aid needy low-income individuals and families in benefiting from Federal, State and local housing programs in rural areas, the Grantee will provide such a program in accordance with the terms of this agreement and applicable Farmers Home Administration (FmHA) regulations.

Part A *Definitions:*

1. "Beginning date" means the date when work under this grant will commence. Such date is set forth in Paragraph 2 of Part B of this Agreement.

2. "Ending date" means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension. Such date is set forth in Paragraph 2 of Part B of this Agreement.

3. "Disallowed costs" are those charges to a grant which the FmHA determines cannot be authorized in accordance with applicable Federal costs principles or other conditions contained in this Agreement.

4. "Grant closeout" is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. "Termination" of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time before the date of completion.

Part B *Terms of agreement:*

Grantor and grantee agree:

1. This agreement shall be effective when executed by both parties.

2. The TSA activities approved by FmHA shall commence not later than ———, and shall be completed by ———, unless earlier terminated under paragraph B 18 below, or extended.

3. Grantee shall carry out the TSA activities described in the application docket which is made a part of this Agreement. Grantee will be bound by the conditions set forth in the docket and the further conditions set forth in this Agreement. If any of the conditions in the docket are inconsistent with those in the Agreement, the latter will govern. A change of any conditions must be in writing and must be signed by an authorized representative of FmHA.

4. Grantee shall use grant funds only for the purpose and activities specified in FmHA regulations and in the application docket approved by FmHA including the approved budget. Any uses not provided for in the approved budget must be approved in writing by FmHA in advance.

5. If the Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA employees for similar expenses. If the Grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary the FmHA rates will be the maximum allowed.

6. Grant funds will not be used for any of the following:

(a) To pay obligations incurred before the effective date of this Agreement.

(b) To pay obligations incurred after the grant termination or ending date.

(c) Entertainment purposes.

(d) To pay for capital assets, the purchase of real estate or vehicles, improvement or renovation of space, or repair or maintenance of privately owned vehicles.

(e) Any other purpose specified in 7 CFR 1944.520.

7. Grant funds shall not be used to replace any financial support previously provided or assured from any other source.

8. Disbursal of grants will be governed as follows:

(a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of Title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the Grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A-102 (42 FR 45828 September 12, 1977) for State and local governments and OMB Circular A-110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

(b) Cash advances to the Grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planned project.

(c) Grant funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days from the date of the Treasury check, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to FmHA that all officers of the Grantee organization authorized to receive and/or disburse Federal funds are covered by satisfactory fidelity bonds sufficient to protect the Grantor's interests.

(e) Grant funds will be placed in the Grantee's bank account(s) until disbursed.

9. the Grantee will submit Performance and Financial reports as indicated below to the appropriate FmHA District Office:

(a) As needed, but not more frequently than once every 30 days, an original and 2 copies of Standard Form 270, "Request for Advance or Reimbursement."

(b) Quarterly, (not later than January 15, April 15, July 15, and October 15 of each year) an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report in accordance with § 1944.541 of this subpart.

(c) Within forty-five (45) days after the termination or expiration of the grant agreement, an original and 2 copies of Standard Form 269, and a final Project Performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the Grantee for TSA. Final reports may serve as the last quarterly report.

(d) FmHA may require performance reports more frequently if it deems necessary.

10. In accordance with FMC 74-4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

11. If the grant exceeds $100,000, transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval by the appropriate District Director.

12. Results of the program assisted by grant funds may be published by the grantee without prior review by FmHA, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949 and that five copies of each such publication are furnished to the District Director.

13. Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

14. No person in the United States shall, on the grounds of race, creed, color, sex, marital status, age, national origin, or mental or physical handicap, be excluded from participating in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with pertinent nondiscrimination regulations of FmHA.

15. In all hiring or employment made possible by or resulting from this grant, Grantee: (a) Will not discriminate against any employee or applicant for employment because of race, creed, color, sex, marital status, national origin, age, or mental or physical handicap, and (b) will take affirmative action to insure that employees are treated during employment without regard to their race, creed, color, sex, marital status, national origin, age, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event Grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, Grantee shall include in the contract the "Equal Employment Clause" as specified by FmHA.

16. The grantee accepts responsibility for accomplishing the TSA program as submitted and included in the application docket. The Grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(c) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

17. Grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of Grantee activity.

(i) The grantee shall immediately refund to FmHA any uncommitted balance of grant funds.

(ii) The Grantee will furnish to FmHA within 45 days after the date of completion of the grant a Standard Form 269 and all financial, performance, and other reports required as a condition of the grant.

(iii) The Grantee shall account for any property acquired with TSA grant funds, or otherwise received from FmHA.

(iv) After the grant closeout, FmHA retains the right to recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the Grantee has failed to comply with the terms of this Agreement, the State Director can, on reasonable notice, terminate the grant pursuant to paragraph (c) below and withhold further payments or prohibit the Grantee from further obligating grant funds. FmHA may allow all necessary and proper costs which the Grantee could not reasonably avoid.

(c) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole, or in part, at any time before the date of completion, whenever FmHA determines that the Grantee has failed to comply with the terms of the Agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make satisfactory progress in attaining grant objectives.

(B) Failure of Grantee to use grant funds only for authorized purposes.

(C) Failure of Grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by FmHA or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA in connection with any FmHA programs.

(F) Failure to maintain an accounting system acceptable to FmHA.

(ii) *Termination for convenience.* FmHA or the Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) Procedure for termination of grant for cause. FmHA shall notify the Grantee in writing of the determination and the reasons for and the effective date of the whole or partial termination in accordance with 7 CFR 1900.53.

18. Extension and/or revision of this grant agreement may be approved by FmHA provided, in its opinion, the extention and/or revision is justified and there is a likelihood that the Grantee can accomplish the goals set out and approved in the application docket during the period of the extension and/or revision as specified in 7 CFR 1944.538.

Part C—*Grantee agrees:*

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A-102 or Attachment N of OMB Circular A-110 for State and local governments or nonprofit organizations respectively. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of paragraph 1(c) below.

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(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the Grantee has title.

(i) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA.

(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency. FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal shares $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(B) If the Grantee is instructed to dispose of the property other than as described in paragraph 1(a)(iv) above, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(C) The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements.

(*1*) Property records shall be maintained accurately and shall include:

(*a*) A description of the property.

(*b*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*c*) Sources of the property including grant or other agreement number.

(*d*) Whether title vests in the Grantee or the Federal Government.

(*e*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*f*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(*g*) Location, use, and condition of the property and the date the information was reported.

(*h*) Unit acquisition cost.

(*i*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a Grantee compensates the Federal agency for its share.

(*2*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*3*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any difference between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*4*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(*5*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*6*) When the Grantee is authorized or required to sell the property, proper sales procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

(*7*) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to paragraph B(9)(c) of this agreement except in the following situations:

(a) If any litigation, claim, or audit is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(b) Records for nonexpandable property acquired with Federal funds shall be retained for three years after final disposition.

(c) When records are transferred to or maintained by FmHA, the three year retention requirement is not applicable.

Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly auhthorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by the Grantor concerning the Grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Part C 1.

6. To provide Grantor with such periodic reports of Grantee operations as may be required by authorized representatives of the Grantor.

7. To execute Form FmHA 400-1, "Equal Opportunity Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued purusant to the Federal Clean Air Act as amended. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

9. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will, to the extent legally permissible, repay to the Grantor forthwith the grant funds received with interest at the rate of five percentum per annum

from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State Courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

10. That no member of Congress shall be admitted to any share or part of this Grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the Grant a publicly held corporation whose ownership might include a member of Congress.

11. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

12. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

13. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

14. That the Grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment O, or OMB Circular A-110, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

15. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 USC 1471 et. seq., and related regulations, and that rights granted to FmHA herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect FmHA's financial interest.

16. Standard of Conduct. No employee, officer or agent of Grantee shall participate in the selection, award or administration of a contract in which Federal funds are used where, to the knowledge of such employee, officer or agent, the employee, officer or agent or such person's immediate family members, partners or any organization in which such person or such person's immediate family award or administration of the contract, or (2) when such person is negotiating or has any arrangement concerning future employment. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects in which the persons receiving TSA assistance may be placed as a result of such assistance.

Part D—*Grantor agrees:*

1. That it may assist Grantee, within available appropriations, with such technical and management assistance as needed in planning the project and coordinating the plan with local officials, comprehensive plans, and any State or area plans for improving housing for low-income families in the area in which the project is located.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and Grantor's regulations.

This Agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof. Grantee on ———, 19—, has caused this Agreement to be executed by its duly authorized ——— and attested and its corporate seal affixed by its duly authorized ———.

Attest:

————————————————

————————————————

Grantee

————————————————

By ————————————————

(Title)

By ————————————————

(Title)

Grantor

United States of America

Farmers Home Administration

By ————————————————

————————————————

(Title)

EXHIBIT B—ADMINISTRATIVE INSTRUCTIONS FOR STATE OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM

A. The State Office will maintain for distribution to potential applicants, upon request, a supply of preapplication packets consisting of:

1. SF 424.1.

2. Form FmHA 400-1, "Equal Opportunity Agreement."

3. Form FmHA 400-4, "Assurance Agreement."

4. Form FmHA 1940-20, "Request for Environmental Information."

5. Subpart K of Part 1944 of this Chapter.

B. The State Office should inform all potential applicants, at the time they pick up forms, that:

1. The preapplication must be submitted to the District Office serving the area in which the applicant proposes to operate the Technical and Supervisory Assistance (TSA) program.

2. The State Office will refer all requests for assistance in completing the preapplication to the appropriate District Office.

C. Beyond the responsibilities of the State Office in the selection of grantees and the administration of the program, and as stated in § 1944.502 of this subpart, the TSA program provides an opportunity for the State Director to give priority to applicants serving the rural areas of greatest need as well as use the program cooperatively with other Federal and State agencies in addressing the housing needs of the residents of a proposed TSA service area. Therefore, the State Office should be prepared, before receipt of preapplications, to advise the District Directors, potential applicants and other Federal and State agencies which part(s) of the State has the greatest need for the TSA program. The State Director should identify target areas in a similar manner to the process used by the Administrator pursuant to § 1944.525 of this subpart. Proposals which are clearly inappropriate and do not meet the basic priorities of § 1944.529 (a) of this subpart should not be encouraged due to the complexity of the preapplication submission.

D. In addition to the instructions of § 1944.526 of this subpart, the State Office should follow the procedures outlined below:

1. Review preapplications for completeness and adequacy and make assessments required by § 1944.526(c)(1) of this subpart.

2. Request clarifications from the District Office if necessary.

3. Evaluate the proposals in light of § 1944.529 of this subpart and select the proposal(s) which best meets the priorities established under the project selection criteria in § 1944.529 (a), (b) and (c) of this subpart.

4. The State Office must provide written comments to be attached to the preapplication(s) justifyng the selection(s) and addressing the items in § 1944.529 of this subpart.

5. The State Office will forward the original SF 424.1 and accompanying documents of the selected preapplication(s) as quickly as possible to the National Office, Attention: Special Authorities Division, Multi-Family Housing. In no case should the State Office forward their selected TSA preapplication(s) later than thirty (30) days after the closing date for receipt of preapplications.

6. Preapplications not selected by the State Office will be returned to the applicants through the appropriate District Offices with notice of appeal rights.

7. In accordance with § 1944.525 of this subpart, State Offices will be advised of the number of preapplications to be submitted from each state to the National Office.

E. Sections 1944.531 and 1944.533 of this subpart detail the responsibilities of the State Office after tentative selection or concurrence of the TSA grantees by the National Office. Those preapplicants not selected will be promptly notified and their preapplication returned with notice of appeal rights. Form AD-622, "Notice of Preapplication Review Action," will be mailed from the State Office to the applicants. District Offices will receive a copy from the State Office.

F. After execution of the grant agreement, the State Office will work closely with the District Office and the grantee to obtain additional resources from other Federal and State agencies to meet the needs of the TSA service area. The State Office should closely review the quarterly project performance reports and assist the District Director, as appropriate, in resolving any problems or taking advantage of favorable funding or program opportunities.

[44 FR 36891, June 22, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503 and 13504, April 11, 1990]

EXHIBIT C—INSTRUCTIONS FOR DISTRICT OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM

A. The District Office will maintain for distribution to potential applicants, upon request, a supply of preapplication packets consisting of:

1. SF 424.1.
2. Form FmHA 400-1, "Equal Opportunity Agreement."
3. Form FmHA 400-4, "Assurance Agreement."
4. Form FmHA 1940-20, "Request for Environmental Information."
5. Subpart K of Part 1944 of this chapter.

B. District Directors will provide any necessary assistance in completing preapplication forms.

C. All applicants will submit preapplications to District Offices. Upon receipt of the preapplication the District Director will review it to ensure that the preapplication is complete and make assessments required by § 1944.526(b)(1) of this subpart.

D. The District Director will provide written comments to be attached to the preapplication. These comments will, at a minimum, address the following items:

1. Whether the area to be covered by the project is a "rural area" as defined by FmHA regulations.
2. The District Director's knowledge of the applicant's past history.
3. The need for the proposed activity, and its relationship to the targeting strategies for the District.
4. Appropriateness and applicability of this proposal for FmHA implementation funds.
5. Extent of citizen involvement in development of preapplication, particularly the involvement of minority and/or low-income groups.
6. All other criteria specified in § 1944.529 of this subpart.
7. The comments and recommendations of the County Supervisors for the proposed TSA service area.

E. The District Director will forward the original and one copy of the preapplication and accompanying documents along with the comments and a summary recommendation to the State Director within ten (10) working days of receipt of the preapplication.

F. Those applicants invited to submit applications will submit their applications to the District Office with two copies. The District Office will retain the original for the docket and forward one copy to the appropriate State Office after making sufficient copies to forward one copy to each of the appropriate County Offices.

G. The District Director, upon receipt of the application, will prepare a docket in accordance with § 1944.531 of this subpart. The procedures for approval and project servicing are detailed in this subpart.

[44 FR 36891, June 22, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13504, Apr. 11, 1990]

EXHIBIT D—AMENDMENT TO TECHNICAL AND SUPERVISORY ASSISTANCE GRANT AGREEMENT

This Amendment to Agreement dated ———— 19 — between

herein called "Grantee," organized and operating under ——————————

——————————————————

(authorizing State Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "FmHA," amends the Technical and Supervisory Assistance Grant Agreement" between the parties hereto dated ———— 19 —, hereinafter called the "Agreement."

Said Agreement is amended by changing the ending date specified in Paragraph 2 of Part B of the Agreement from ———— to ——— and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Agreed to this —— day of ———— 19 —

——————————————————

(Name of Grantee)

By ——————————————————

(Signature)

——————————————————

(Title)

United States of America

By ——————————————————

(Signature)

——————————————————

(Title)

Farmers Home Administration

——————————————————

(Date)

EXHIBIT E—GUIDE LETTER TO DELINQUENT FMHA SINGLE FAMILY HOUSING LOAN BORROWERS

Dear ——————————————————
(name of borrower)):

This is to advise you that (name of TSA grantee) is available to provide independent counseling services to Farmers Home Administration (FmHA) borrowers in need of financial management assistance. These services may assist you in resolving your present delinquency in your housing loan.

This organization is prepared to provide financial and budget counseling at no charge to you. Their counseling services include advice on debt levels and credit purchases, consumer and cost awareness, debt adjustment procedures, and other financial information and services.

You are urged to take advantage of this program. However, your participation is voluntary and does not relieve you of any of your loan obligations to FmHA or limit the remedies FmHA has to bring your loan current or recover the loan in full. Any plan altering your repayment schedule in any way must be approved by this office. However, it is our intention to work with you and the counseling organization in every way we can to resolve your delinquency.

If you want to participate in this program, please sign the attached copy of this letter and return it to this office. At that time we will advise (name of TSA grantee) that you are interested in their services and provide them with the information they need to contact you. Only information available to the general public will be released.

We are sure you agree that it is in your interest to make every effort to bring your account current. We look forward to your return of the attached copy of this letter.

Sincerely,

County Supervisor
Farmers Home Administration

Enclosure

(On attached copy only:)

I desire to participate in the counseling program with (name of TSA grantee).

——————————————————
Borrower

——————————————————
Date

Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

SOURCE: 48 FR 56177, Dec. 19, 1983, unless otherwise noted.

§ 1944.551 Purpose.

The purpose of this subpart is to set forth uniform requirements for grievance and appeals procedures in all Rural Rental Housing (RRH) and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) under sections 514, 515, and 516 of the Housing Act of 1949. The objective of this subpart is to ensure the fair treatment of tenants while providing for an equitable manner by which borrowers can operate, maintain, and safeguard rental projects. The right to appeal under this subpart will also extend to persons who seek admission as tenants.

§ 1944.552 Definitions.

(a) *Applicant.* A person who has submitted an application to occupancy in a RRH or LH project, and is not a tenant. This includes persons who have been denied an application for admission, except when applications are not being processed due to the fact that it will be awhile before additional applicants can be reached on a waiting list. In such cases, applicant inquiries will be handled in accordance with paragraph VI D 1 b of Exhibit B of Subpart C of Part 1930 of this Chapter.

(b) *Borrower.* The borrower (landlord) is the owner or the owner's authorized representative, of a RRH or LH project.

(c) *Eviction.* Dispossession of the tenant by judicial action pursuant to State or local law from a RRH or LH unit as a result of termination of the tenancy, including a termination before or at the end of the lease term.

(d) *Grievance.* A dispute which a tenant has with the borrower's action, or failure to act, according to the lease and/or FmHA regulations which results or may result in denial, significant reduction, or termination of benefits (other than eviction by judicial action pursuant to State or local law).

(e) *Hearing.* An informal proceeding at which a tenant's grievance or appeal of a borrower's adverse action or decision, or an applicant's appeal of a rejected application, or denial of an application for admission is heard before an impartial hearing officer or hearing panel.

(f) *Lease.* The written agreement, approved by FmHA, between the borrower and tenant.

(g) *Tenant.* An eligible lessee/occupant of a RRH or LH project who has executed a lease agreement.

(h) *Termination of tenancy.* The termination of the lease, either before or at the end of the lease term, as the result of material noncompliance with the terms of the lease, rules for occupancy, or violation of FmHA regulations applicable to conditions for occupancy.

§ 1944.553 Exceptions.

This subpart does not apply to:

(a) *Rent changes authorized by FmHA.* Rent changes must be authorized by FmHA in accordance with the requirements of Exhibit C to Subpart C of Part 1930 of this Chapter where tenants are provided an opportunity to provide comments to FmHA on a borrower's Notice of Proposed Rent Change.

(b) *Discrimination complaints.* When a dual issue is alleged (Lack of service or admission because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap) the grievance which will affect the tenant's rights to decent, safe and sanitary conditions, will be handled in accordance with this subpart; at the same time a copy of the complaint must be forwarded to the Director, Equal Opportunity Staff, National Office, Washington, D.C. 20250, for review and investigation of the discrimination complaint. The tenant's right to a hearing on his/her grievance will not be delayed pending resolution of the discrimination allegation.

(c) *Projects in which an association of all tenants has been duly formed.* In projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternate method of settling grievances, that method will be used.

(d) *Changes in rules required by FmHA.* Changes in rules required by FmHA in which proper notice and opportunity have been given according to law and the provisions of the lease.

(e) *Notification of termination of tenancy and eviction.* Notification of termination of tenancy and eviction is to be handled in accordance with paragraph XIV B of Exhibit B of Subpart C of Part 1930 of this Chapter and according to State or local law.

(f) *Termination of tenancy and eviction by judicial action as prescribed by State or local law.* Termination of tenancy and eviction must be based on material violation of the lease terms or for other good cause as determined by the borrower or the project manager in accordance with paragraph XIV A of Exhibit B of Subpart C of Part 1930. The borrower shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this subpart.

(g) *Disputes between tenants.* This subpart dose not apply to disputes between tenants not involving the borrower.

§ 1944.554 Reasons for grievance and appeal.

(a) *Tenants.* Grievance and appeal procedures provide a means for a tenant, in an FmHA financed rental project, to meet with a borrower and to obtain a hearing if the tenant has a grievance. This opportunity relates to a borrower's action or failure to act, in accordance with the lease and/or FmHA regulations and results in a denial, significant reduction or, termination of benefits; or, when a tenant contests a borrower's notice of proposed adverse action as provided in § 1944.555(b) of this subpart. This may include:

(1) Failure to maintain the premises in such manner that provides decent, safe, and sanitary housing.

(2) Violation of lease covenants and rules.

(3) Modification of lease.

(4) Rule changes.

(5) Rent changes not authorized by FmHA according to Exhibit C of Subpart C of Part 1930 of this chapter.

(6) Failure to maintain the premises according to State and local laws, statutes, or ordinances in effect at the date of final construction unless new or amended laws and ordinances are made retroactive to, or prior to, the date of final construction.

(7) Denials of RA.

(b) *Applicant.* Grievance and appeal procedure provides an appeal right for a person whose application for admission to occupancy in a RRH or LH project has been rejected, as well as for a person who has been denied an application for admission, except in those cases where applications are not being processed as provided for in paragraph VI D I b of Exhibit B of Subpart C of Part 1930 of this Chapter. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations.

[48 FR 56177, Dec. 19, 1983, as amended at 50 FR 8596, Mar. 4, 1985]

§ 1944.555 Settlement of grievances and appeals.

(a) *General.* Borrowers and applicants/tenants are encouraged to attempt to settle disputes through informal meetings without resorting to the hearing process further described in this subpart.

(b) *Notice to applicant/tenant.* In the case of a borrower's proposed adverse action including denial of admission to occupancy, the borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, giving specific reasons for the proposed action. The notice must also advise the applicant or tenant of the right to respond to the notice within 10 calendar days after receipt, in accordance with paragraph (c) of this Section and of the right to a hearing in accordance with § 1944.556 of the subpart. In projects where there is a concentration of non-English speaking individuals, the notice must also be in the non-English concentration language, when necessary, for the tenant's understanding.

(c) *Presentation of grievances or responses to notice of proposed adverse actions.* If the adverse action cannot be resolved otherwise, the applicant/tenant shall personally present to the borrower or borrower's designee any grievance or response, either orally or in writing, within 10 calendar days after occurrence of the grievance or receipt of a notice of proposed adverse action. If requested, the borrower shall meet with the tenant within 5 working days of the request in an attempt to resolve the grievance. The meeting shall be informal and the borrower shall be responsible for keeping appropriate notes relative to the meeting. If the grievance is not resolved to the applicant's/tenant's satisfaction, the borrower shall prepare a summary of the problem, including the borrower's position, the applicant's/tenant's position, and the results of the meeting (Exhibit A of this subpart must be used as the format for the summary) within 10 calendar days after the informal meeting. Two copies of the summary must be given to the applicant/tenant, one retained in the borrower's files and one sent to the District Director.

§ 1944.556 Procedure for obtaining a hearing.

(a) *Request for hearing.* If the applicant or tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after receipt of the summary of any informal meeting. The written request must specify:

(1) The reasons for the grievance or contest of the borrower's proposed action, and

(2) The action or relief sought.

(b) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant shall select a hearing officer or hearing panel. The hearing officer shall be an impartial, disinterested person selected jointly by the borrower and the tenant. If the borrower and the tenant cannot agree on a hearing officer, they shall each appoint a member to a hearing panel and the members so selected shall select a third member. If within 30 days from the date of the request for a hearing the tenant and borrower, or their designee, have not agreed upon the selection of a hearing officer or hearing panel, the borrower shall notify the District Director by mail of the facts of the matter. The District Director shall, within 10 working days of receipt of the letter, appoint a person to serve as the sole hearing officer. The District Director's selection of a hearing officer is final. The person selected by the District Director should not be an individual previously considered by the tenant or borrower. Members of the hearing panel or the hearing officer must be willing to render their service without compensation. The hearing officer or hearing panel has the authority to reverse the borrower's decision.

(c) *Standing hearing panel.* In lieu of the procedure set forth in paragraph (b) of this section for each grievance or appeal presented, a borrower may provide that a standing panel be organized for each project. Such a panel may be organized soon after initial rent-up or at any time in the case of existing projects. Such a panel will be selected and have a membership as follows:

(1) Standing panelist(s) of the tenants would be elected by a majority of the tenants. Either two alternates could be elected or three panelists of the tenants could be elected with equal status. The tenant, in this latter case, would designate one of the three tenant panelists to participate in the hearing. All tenants would be notified of the time, date, and purpose of the meeting to elect permanent hearing panelists at least two weeks before the appointed date. The notice must be conspicuously posted in the rental office and in each apartment building or structure. The meeting must be held at a place which is convenient and accessible to the tenants.

(2) Standing borrower panelist(s) selected by the borrower. One or two alternates may also be designated.

(3) A standing mutual panelist, to serve as the chair, selected by the other two persons or groups, including alternates, in which case each "group" gets one vote.

(4) All standing hearing panel members serve one year and may be reelected. They must be willing to render their services without compensation.

(5) A panel for a hearing shall consist of 3 members, one tenant panelist, one borrower panelist and the chair.

(d) *Examination of records.* When the borrower has provided the applicant/tenant with a notice of proposed adverse action, the borrower shall allow the tenant to have the opportunity, at a reasonable time before the hearing and, at the expense of the tenant, to examine and/or copy all documents, records, and regulations of the borrower *which the borrower intends to use at the meeting* unless otherwise prohibited by law.

(e) *Scheduling of hearing.* A hearing shall be scheduled to be held within 15 days after receipt of the tenant's request for a hearing at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(f) *Escrow deposit.* Provided the tenant's rental payments are otherwise current, an escrow deposit of rental payments may be used by the tenant in the case of a grievance involving a rent increase not authorized by FmHA, or if the borrower fails to maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant shall deposit into escrow, when the rent is due, the amount required by the lease. The escrow deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent must be deposited in a federally insured financial institution or with a bonded independent agent. Failure to make timely escrow payments will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease. Receipts of deposit must be available for examination by the borrower or the borrower's designee.

(g) *Failure to request a hearing.* If the applicant/tenant does not request a hearing within the time provided by paragraph (a) of this section, the borrower's disposition of the grievance or appeal will become final.

§ 1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) of this section, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(b) The hearing must be structured so as to provide the basic safeguards for both the borrower and the tenant, which must include:

(1) The right of both parties to be represented by counsel or another person(s) chosen as their representative.

(2) The right of the applicant/tenant to a private hearing unless a public hearing is requested.

(3) The right of the applicant/tenant to present oral or written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present oral or written evidence and arguments in support of the decision, to refute evidence relied upon by the applicant/tenant, and to confront and cross-examine all witnesses on whose testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the applicant/tenant must present evidence that he/she is entitled to the relief sought, and thereafter, the borrower shall present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing officer or hearing panel shall require that the borrower, the applicant/tenant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings, or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the applicant/tenant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this subpart. Both the applicant/tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

§ 1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision must be sent to the borrower, the applicant/tenant, and the FmHA District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the District Director that the decision violates FmHA regulations. The notification of the District Director will specify the FmHA regulation that the decision violates. The hearing officer or hearing panel shall amend the decision to comply with the regulation(s) within 10 days of receipt of the notice. (However, the decision of the hearing officer or hearing panel does not preclude either party's right thereafter to seek judicial relief through the courts.)

(c) Upon receipt of written notification from the District Director that the decision is in compliance with FmHA regulations, the decision is binding upon the borrower and tenant, and the borrower and tenant shall take the necessary action, or refrain from any actions, necessary to carry out the decision.

§ 1944.559 Responsibilities of the FmHA District Director.

(a) The District Director shall assure that a copy of this subpart is sent to each borrower with a requirement that the regulations be permanently posted in a conspicuous place for the information of tenants, such as the rental offices, laundry areas, activities rooms, or other places where it will be noticed by tenants. The District Director shall also require that the borrower maintain copies of this subpart at all times for inspection by the tenants and FmHA upon request. The District Director shall assure that where there is a concentration of non-English-speaking individuals, the regulation is made available in both English and the non-English concentration language.

(b) The District Director shall encourage the borrower and applicant/tenant to resolve grievances and appeals through informal discussion; however, upon receipt of a summary of informal discussion as required by § 1944.555(c) of this subpart, the District Director shall immediately review the summary to ascertain that the applicant/tenant has received a copy of the summary and a copy of the proceedings to obtain a hearing, if matters could not be resolved through informal discussion.

§§ 1944.560—1944.599 [Reserved]

§ 1944.600 OMB control numbers.

The collections of information requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0046.

EXHIBIT TO SUBPART L

EXHIBIT A—SUMMARY OF MEETING

Name and Address of Borrower:

Name and Address of Project:

Name and Address of Complainant:

Specific Nature of Complaint:

Date of Meeting:
Participants in Meeting:

Decision and Specific Reasons Therefore:
Borrower's Signature ————————

I hereby acknowledge receipt of a copy of this summary and have been advised of my rights to use the attached procedures to obtain a hearing if I so choose.

Tenant's Acknowledgment:
Tenant's signature ————————

Procedures for Obtaining a Hearing:

The following procedures may be used to obtain a hearing if you are not satisfied with the decision made as a result of our discussion on (date) ————.

1. *Request for a Hearing.* Send a written request for a hearing within ten days after you receive this notice to the project address shown in the summary. Indicate specifically: (1) The reason for your grievance or challenge of our proposed action, and (2) the action or relief you seek.

2. *Selection of Hearing Officer or Hearing Panel.* (Strike out paragraph not needed).

(a) As you probably already know, a Standing Hearing Panel is available to conduct the hearing.

(b) We need to meet soon after your request for a hearing is received to select a hearing officer/hearing panel.

3. *Scheduling of Hearing:* The hearing will be scheduled to be held within 15 days after we receive your request for a hearing. It will be held at a time and place convenient for both of us. If we cannot agree on a time and place, the hearing officer/hearing panel will designate the time and place.

4. *Examination of Records:* You have the opportunity before the hearing to examine

and, at your own expense, to copy all documents, records, and regulations that are relevant to the hearing unless otherwise prohibited by law.

5. *Procedures Governing Hearing:*

(a) The hearing will be an informal proceeding before a hearing officer or hearing panel at which both parties will have an opportunity to present their sides of the dispute.

(b) Both parties may be represented by legal counsel or another person of one's choice.

(c) You have a right to a private hearing, unless you request a public hearing.

(d) Both parties have the right to present evidence, arguments, and witnesses to support their sides of the dispute, to refute evidence relied upon by the other party, and to confront and cross-examine all witnesses.

(e) A decision will be based solely and exclusively upon the facts presented at the hearing.

Subpart N—Housing Preservation Grants

SOURCE: 51 FR 17447, May 13, 1986, unless otherwise noted.

§ 1944.651 General.

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to eligible applicants to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the cost of providing assistance to rural housing homeowners for loans, grants, interest reduction payments or other assistance that will reduce the cost of repair and rehabilitation. Such assistance will be used by the homeowner to remove or correct health or safety, hazards of their home to meet applicable development standards or make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons.

(b) The Farmers Home Administration (FmHA) will provide Housing Preservation Grant (HPG) assistance to applicants responsible for providing assistance to eligible homeowners without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap if such person has capacity to contract.

§ 1944.652 Policy.

(a) The policy of FmHA is to provide housing preservation grants to eligible applicants to operate a program which finances repair and rehabilitation to single family housing for very low- and low-income homeowners. Applicants are expected to:

(1) Coordinate and leverage funding for the repair and rehabilitation of such housing with housing and community development organizations and/or activities operating in the same area; and

(2) Focus the program to rural areas and smaller communities so it serves very low- and low-income families.

(b) FmHA intends to permit grantees considerable latitude in program design and administration. The forms or types of assistance must provide the greatest long term benefit to the greatest number of persons residing in housing needing repair and rehabilitation.

(c) Repairs and rehabilitation activities affecting properties on or eligible for listing on the National Register of Historic Places will be accomplished in a manner that supports national historic preservation objectives as specified in § 1944.673 of this subpart.

§ 1944.653 Objective.

The objective of the HPG program is to rehabilitate housing owned and occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation.

§§ 1944.654—1944.655 [Reserved]

§ 1944.656 Definitions.

References in this subpart to District, State, National and Finance Offices and to District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this subpart have the following meanings:

(a) *Adjusted annual income.* As defined under § 1944.2(k) of Subpart A of Part 1944 of this chapter.

(b) *Applicant or grantee.* Any eligible organization which applies for or receives HPG funds under a grant agreement.

(c) *Grant agreement.* The contract between FmHA and the applicant which sets forth the terms and conditions under which HPG funds will be made available. (See Exhibit A of this subpart.)

(d) *Homeowner.* For the purposes of the HPG program, a homeowner is one who can meet the conditions of ownership under § 1944.661 of this subpart.

(e) *Housing preservation.* Repair and rehabilitation activities that contribute to the health, safety and well-being of the occupant and contribute to the structural integrity or long term preservation of the unit. As a result of these activities, the overall condition of the house must be raised to meet FmHA Thermal Standards and applicable development standards for existing housing recognized by FmHA in Subpart A of Part 1924 of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by FmHA. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673 of this subpart.

(f) *Low-income.* An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by HUD for the county or MSA where the property is or will be located. Maximum low-income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

(g) *Organization.* (1) A State, commonwealth or trust territory or other political subdivision, or public nonprofit corporation authorized to receive and administer HPG funds;

(2) An Indian tribe, band group, nation, including Alaskan Indians, Aleuts, Eskimos and any Alaskan Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512);

(3) A private nonprofit corporation that is owned and controlled by private persons or interests and is organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, is legally precluded from distributing any gains or profits to is members, and is authorized to undertake housing development activities; or

(4) A consortium of units of governments and/or private nonprofit organizations which is otherwise eligible to receive and administer HPG funds and which meets the following conditions:

(i) Be comprised of units of government and/or private nonprofit corporations that are close together, located in the same state, and serve areas eligible for FmHA housing assistance; and

(ii) Have executed an agreement among its members designating one participating unit of government or private nonprofit corporation as the applicant or designating a legal entity (such as a Council of Governments) to be the applicant.

(h) *Rural area.* The definition in § 1944.10 of Subpart A of Part 1944 of this chapter applies.

(i) *Very low-income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by the Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum very low-income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

§ 1944.657 [Reserved]

§ 1944.658 Applicant eligibility.

To be eligible to receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.656(g) of this subpart.

(b) Have the necessary background and experience on the part of its staff or governing body with proven ability to perform responsibly in the field of low-income rural housing development, repair, and rehabilitation, or have other business management or administrative experience which indicates an ability to operate a program providing repair and rehabilitation financial assistance;

(c) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation and the grant agreement, OMB Circulars A-102 (Uniform Requirements for Grants to State and Local Governments), A-87 (Cost Principles for State and Local Governments), A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals, and A-122 (Cost Principles for Nonprofit Organizations other Nonprofit Organizations, Uniform Administrative Requirements) as appropriate which are available in any FmHA office, and comply with the grant agreement and FmHA regulations; and

(d) If the applicant is engaged in or plans to become engaged in any other activities, provide sufficient evidence and documentation that it has adequate resources, including financial resources, to carry on any other programs or activities to which it is committed without jeopardizing the success and effectiveness of its HPG project.

§ 1944.659 [Reserved]

§ 1944.660 Authorized representative of the HPG applicant and FmHA point of contact.

(a) FmHA will deal only with authorized representatives designated by the HPG applicant. If the authorized representative is a third party, the representative must have no pecuniary interest directly or indirectly after grant award in any of the following as they would relate in any way to the HPG grant: the award of any engineering, architectural, management, administration, or construction contracts; purchase of any furnishings, fixtures or equipment; or purchases and/or development of land.

(b) FmHA has designated the District Office as the point of initial contact for all matters relating to the HPG program and as the office generally responsible for the administration of HPG projects. However, the State Director may, based on total program size or complexity of a particular applicant, elect to process applications and service the program at the State Office. "Administrative Instructions for FmHA Field Offices Regarding Their Responsibilities in the Administration of Housing Preservation Grant Program" (available in any FmHA Office), provides guidance to FmHA staff on the HPG program.

§ 1944.661 Homeowner eligibility for HPG assistance.

The homeowners assisted by HPG must have income that meets the low- or very-low-income definition, be the owner of a single family dwelling at least one year prior to the time of assistance, and be the intended occupant of the dwelling subsequent to the time of assistance. The dwelling must be located in a rural area and be in need of housing preservation assistance. Determination of income will be made in accordance with § 1944.8 of Subpart A of Part 1944 of this Chapter. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. Each homeowner is required to submit evidence of income and ownership for retention in the grantee's files. Grantees may use certifications or require additional information from the homeowner and should seek advice from their attorney.

(a) Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least one year prior to the date of requesting assistance; and

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(b) The following items may be accepted as evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the HPG recipient is listed as the owner of the property by the local taxing authority and that real estate taxes, if any, for the property are paid by the recipient.

(3) Affidavits by others in the community that the recipient has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

§§ 1944.662–1944.663 [Reserved]

§ 1944.664 Housing preservation assistance.

(a) Grantees under HPG are responsible for providing loans, grants or other comparable assistance to homeowners for housing preservation as described in § 1944.656(e) of this subpart.

(b) Authorized housing preservation assistance includes but is not limited to cost of labor and materials for:

(1) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements.

(2) Energy conservation measures such as:

(i) Insulation; and

(ii) Combination screen-storm windows and doors.

(3) Repair or replacement of the heating system including the installation of alternative systems such as woodburning stoves or space heaters, when appropriate and if local codes permit.

(4) Electrical wiring.

(5) Repair of, or provision for, structural supports and foundations.

(6) Repair or replacement of the roof.

(7) Replacement of severely deteriorated siding, porches or stoops.

(8) Alterations of the unit's interior or exterior to provide greater accessibility for any handicapped family members.

(9) For properties listed on or eligible for the National Register of Historic Places, activities associated with conforming repair and rehabilitation activities to the standards and/or design comments resulting from the consultation process contained in § 1944.673 of this subpart.

(10) Necessary repairs to manufactured homes or mobile homes provided:

(i) The recipient owns the home and the site on which the home is situated and has occupied that home on that site for at least one year prior to receiving HPG assistance; and

(ii) The manufactured home or mobile home is on a permanent foundation or will be put on a permanent foundation with HPG funds. Advice on the requirements for a permanent foundation is available from FmHA.

(11) Additions to any dwelling (conventional, manufactured or mobile) only when it is clearly necessary to alleviate overcrowding or to remove health hazards to the occupants.

(c) HPG funds may be used for payment of incidental expenses directly related to accomplishing authorized activities such as fees for connection of utilities (water, sewer, gas, electric), credit reports, surveys, title clearance, loan closing, inspections, and architectural and other technical services. All fees will be in accordance with local prevailing rates and so documented.

(d) HPG funds may be used to make improvements that do not contribute to the health, safety and well being of the occupant or do not materially contribute to the structural integrity or long term preservation of the unit. The percentage of funds to be used for such purposes must not exceed 25 percent of the total funding for the unit, and such work must be combined with improvements listed as eligible under paragraph (b) of this section. These improvements might include, but are not limited to the following:

(1) Painting;

(2) Paneling;

(3) Carpeting;

(4) Improving clothes closets or shelving;

(5) Improving kitchen cabinets;

(6) Air conditioning; or

(7) Landscape plantings.

(e) Under the following conditions, HPG funds may be used to reimburse the grantee for authorized housing preservation activities performed by employees of the grantee where the grantee acts as a construction contractor and furnishes construction services:

(1) The grantee must demonstrate that such work performed by the grantee results in cost savings in terms of time and labor over cost for such work prevailing in the area;

(2) The grantee has established a process for third party review of performance by a local government, building inspector or other independent party;

(3) The grantee has established or makes available a process that provides for consumer protection to the homeowner assisted; and

(4) The grantee's accounting system provides a clear delineation between administrative costs and construction contractor (nonadministrative) costs.

(f) HPG funds may not be used to:

(1) Assist in the construction or completion of a new dwelling.

(2) Refinance any debt or obligation of the homeowner other than obligations incurred for eligible items covered by this section entered into after date of agreement with HPG grantee.

(3) Repair or rehabilitate any property located in the Coastal Barrier Resources System as designated by the Coastal Barrier Resource Act.

§ 1944.665 Supervision and inspection of rehabilitation and repair work.

Grantees are responsible for supervising all rehabilitation and repair work financed with HPG assistance. All HPG work must be inspected by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, or if the grantee would also normally make such inspections, the grantee must use qualified contract or fee inspectors. A grantee may not inspect its own work.

§ 1944.666 Administrative activities and policies.

Grant funds are to be used primarily for housing repair and rehabilitation activities. Use of grant funds for direct and indirect administrative costs is a secondary purpose and must not exceed 20 percent of the HPG funds awarded to the grantee.

(a) Administrative expenses may include:

(1) Payment of reasonable salaries or contracts for professional, technical, and clerical staff actively assisting in the delivery of the HPG project.

(2) Payment of necessary and reasonable office expenses such as office rental, supplies, utilities, telephone services, and equipment. (Any item of nonexpendable personal property having a unit value of $1,000 or more, acquired with HPG funds, will be specifically identified to FmHA in writing.)

(3) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, and the employer's share of Social Security and health benefits. Payments to private retirement funds are permitted if the grantee already has such a fund established and ongoing.

(4) Payment of reasonable fees for necessary training of grantee personnel.

(5) Payment of necessary and reasonable costs for an audit upon expiration of the grant agreement.

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific HPG grant which were anticipated in the individual HPG grant proposal and which have been approved as eligible expenses at the time of grant approval. This may include contract or fee inspection where necessary pursuant to § 1944.665 of this subpart.

(b) HPG administrative funds may not be used for:

(1) Preparing housing development plans and strategies except as necessary to accomplish the specific objectives of the HPG project.

(2) Substitution of any financial support previously provided or currently available from any other source.

(3) Reimbursing personnel to perform construction related to housing preservation assistance. (Nonadministrative funds may be used if construction is for housing preservation assistance under the provisions of § 1944.664(e) of this subpart.)

(4) Buying property of any kind from families receiving assistance from the grantee under the terms of the HPG.

(5) Paying for or reimbursing the grantee for any expense or debts incurred before FmHA executes the grant agreement.

(6) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving HPG assistance outside the costs of repair and rehabilitation.

(7) Any type of political activities prohibited by OMB Circular A-122.

(8) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs unrelated to the HPG assistance to homeowners, legislative expenses and any excess of cost from other grant agreements.

(c) Advice concerning ineligible costs may be obtained from the State Office as part of the HPG application review or when a proposed cost appears ineligible.

(d) The grantee may not charge fees or accept any compensation or gratuities from HPG recipients for the grantee's technical or administrative services under this program. Where the grantee performs as a construction contractor, the grantee may be paid such compensation directly related to construction services provided and limited to authorized housing preservation activities.

§ 1944.667 [Reserved]

§ 1944.668 Term of grant.

HPG projects may be funded under the terms of a Grant Agreement for a period of up to two years commencing on the date of execution of the Agreement by the State Director. Term of the project will be based upon HPG resources available for the proposed project and the accomplishability of the applicant's proposal within one or two years. Applicants requesting a two year term may be asked to develop a feasible one year program if sufficient funds are not available for a two year program.

§ 1944.669 [Reserved]

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners is governed by OMB Circular A-102 or A-110 (available in any FmHA office). All income during the grant period, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

(b) Grantees are encouraged to establish a program which reuses income from loans after the grant period for continuing repair and rehabilitation activities.

§ 1944.671 Equal opportunity requirements.

The policies and regulations contained in Subpart E of Part 1901 of this chapter apply to grantees under this subpart.

§ 1944.672 Environmental and administrative requirements.

The following policies and regulations apply to grants made under this subpart:

(a) Subpart G of Part 1940 of this chapter shall be followed regarding environmental requirements. The following is additional information on how to approach HPG projects under those requirements:

(1) The use of HPG funds to rehabilitate specific single family dwellings are generally exempt from an FmHA environmental review. However, if such units are located in a floodplain or wetland or the proposed work is not concurred in by the Advisory Council on Historic Preservation under the requirements of § 1944.673 of this subpart, an FmHA environmental review is required. Applicants must include in their preapplication a process for identifying units that may receive housing preservation assistance that will require an environmental assessment.

(2) The approval of an HPG grant for the rehabilitation of single family dwellings shall be a Class I action. As part of their application materials, applicants shall submit Form FmHA 1940-20, "Request for Environmental Information," for the geographical area(s) proposed to be served by the program. Guidance on completing the form will be available from the FmHA office servicing the program.

(3) When a unit requiring an environmental assessment is proposed for PG assistance, the grantee will immediately contact the FmHA office designated to service the HPG grant and work with that office in preparing an environmental assessment and otherwise complying with Subpart G of Part 1940.

(b) The policies, guidelines and requirements of OMB Circulars (Nos. A-102 and A-87 for public bodies and Nos. A-110 and A-122 for nonprofits) apply to the acceptance and use of HPG funds.

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 36269, Sept. 19, 1988]

§ 1944.673 Historic preservation requirements and procedures.

(a) FmHA has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation in order to implement the specific requirements regarding historic preservation contained in section 533(i) of the enabling legislation. The PMOA with attachments can be found in FmHA Instruction 2000-FF (available in any FmHA office).

(b) Accordingly, each applicant for an HPG grant will provide, as part of its preapplication documentation submitted to FmHA, a description of its proposed process for assisting very low- and low-income families owning historic properties needing rehabilitation or repair. "Historic properties" are defined as properties that are included or eligible for inclusion on the National Register of Historic Places. Each HPG proposal shall:

(1) Be developed in consultation with the State Historic Prevervation Officer (SHPO) for the State in which the applicant proposes to undertake the HPG program;

(2) Take into account the national historic preservation objectives set forth at 16 U.S.C. 470-1(1), (4), and (5) (Attachment 1 of the PMOA) and specifically be designed to encourage the rehabilitation of historic properties in a manner that realistically meets the needs of very low- and low-income homeowners while preserving the historic and architectural character of such buildings;

(3) Establish a mechanism for determining whether buildings proposed for rehabilitation are "historic properties" and whether rehabilitation may affect historic properties. Such mechanisms must be consistent with the guidance contained in Attachment 2 of the PMOA.

(4) Establish mechanisms, as feasible, for coordinating with other public and private organizations and programs that provide assistance in the rehabilitation and preservation of historic properties;

(5) Establish a system to ensure that the rehabilitation of historic properties is reasonably consistent with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (G.P.O. 1983 0-416-688 or available from any FmHA office processing an HPG preapplication), except as provided in § 1944.673(b)(6), and that the SHPO is afforded the opportunity to comment on each such rehabilitation; and

(6) Establish a system by which the applicant will furnish all necessary information and initiate the consultation steps set forth in 36 CFR Part 800, Protection of Historic and Cultural Properties (available from any FmHA office processing an HPG preapplication), to afford the Advisory Council on Historic Preservation an opportunity to comment on any rehabilitation that the applicant, in consultation with the SHPO, determines cannot reasonably meet the *Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* or would adversely affect historic properties (see Attachment 3 of the PMOA).

(c) For the purposes of § 1944.673(b)(6), the Advisory Council on Historic Preservation will consider grantees as though they were Federal agencies in the process prescribed in the Council's regulations implementing section 106 of the National Historic Preservation Act (36 CFR Part 800, Protection of Historic and Cultural Properties), except that, should the Council be unable to concur in an applicant's proposal or reach agreement with the grantee on measures to avoid or mitigate effects on an historic property, the Council will notify the SHPO, the applicant or grantee and FmHA that the entity cannot be treated as though it were a Federal agency with respect to the specific property under consideration.

(d) The grantee will also notify the FmHA office servicing its program of notification from the Council immediately. Upon receipt of such notification, FmHA will assume responsibility for completing compliance with 36 CFR Part 800, using the procedures for an environmental assessment contained in Subpart G of Part 1940 of this Chapter. The grantee will assist FmHA in preparing this assessment and may be required, if further information is needed, to prepare and submit an FmHA Form 1940-20, "Request for Environmental Information," for the property, with the grantee being the "applicant." FmHA will work with the grantee to develop alternative actions as appropriate.

(e) Such assumption of responsibility by FmHA on a particular property shall not preclude the grantee from carrying out the requirements of 36 CFR Part 800 on other properties as though it were a Federal agency, but no work may be commenced on any unit in controversy until and unless so advised by FmHA.

(f) If FmHA is required to make an environmental assessment, the results of the assessment will be made part of the recipient's file. The grantee must also include in each recipient's file:

(1) Documentation on how the process for historic preservation review under this section has been complied with, including all relevant reviews and correspondence; and

(2) Determination whether the unit is located in a 100-year floodplain or a wetland.

§ 1944.674 Public participation and consultation with State and local governments.

(a) In preparing its Statement of Activity, the applicant is responsible for consulting with leaders from the county, parish and/or township governments of the area where HPG activities will take place for the purpose of assuring that the proposed HPG program is beneficial and does not duplicate current activities. Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of consulting with the county governments when the program is operated only on tribal land.

(b) The applicant must make its statement of activities available to the public for comment. The applicant must announce the availability of its Statement of Activities for review in a newspaper of general circulation in the project area and allow at least 15 days for comment.

(c) The HPG program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under Subpart J of part 1940 of this chapter, "Intergovernmental Review of Farmers Home Administration Programs and Activities," prospective applicants for HPG grants must submit their Statement of Activities to the State Single Point of Contact prior to submitting their preapplication to FmHA. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The name of the Point of Contact is available from the FmHA State Office.

§ 1944.675 Allocation of HPG funds to States and unused HPG funds.

The allocation and distribution of HPG funds is found in § 1940.578 of Subpart L of Part 1940 of this chapter, "Methodology and Formulas for Allocation of Loan and Grant Program Funds."

§ 1944.676 Preapplication procedures.

(a) All applicants will file an original and two copies of SF 424.2, "Application for Federal Assistance (For Construction)," and supporting information outlined in paragraph (b) of this section with the appropriate FmHA office. A preapplication packet including SF 424.2 is available in all FmHA District and State Offices.

(b) All preapplications shall be accompanied by the following information which FmHA will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the preapplication under the project selection criteria of § 1944.679 of this subpart.

(1) A statement of activities proposed by the applicant for its HPG program, including:

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation;

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the unit, identifying potential environmental effects (per § 1944.672 of this subpart), performing the necessary work, and monitoring/inspecting work performed;

(iii) The development standard(s) the applicant will use for the housing preservation work, and, if not the FmHA development standards for existing housing, evidence of its acceptance by the jurisdiction where the grant will be implemented.

(iv) The time schedule for completing the program;

(v) The staffing required to complete the program;

(vi) The estimated number of very low- and low-income minority and nonminority families the applicant will assist with HPG funds;

(vii) The area(s) to be served by the HPG program;

(viii) Annual estimated budget for the program year based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant's budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.

(ix) A brief description of the accounting system to be used;

(x) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to FmHA per § 1944.683(b) of this subpart;

(xi) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(xii) The use of program income, if any;

(xiii) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status; and

(xiv) Any other information necessary to explain the HPG program.

(2) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program;

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under

which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, the names, addresses, and principal purpose of the other organizations and, if a consortium, documentation showing compliance with § 1944.656(g)(4) of this subpart.

(4) For a private nonprofit entity, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by the organization.

(5) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (as related to paragraph (b)(1)(x) of this section).

(6) A list of other activities the applicant is engaged in and expects to continue, a statement as to any other funding, and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the HPG grant agreement.

(7) Any other information necessary to specifically address the selection criteria in § 1944.679 of this subpart.

(c) The applicant must submit a description of its program for identifying and rehabilitating any properties that are listed on or eligible for listing on the National Register or Historic Places as well as evidence of concurrence by the SHPO in the program in accordance with § 1944.673 of this subpart, or, in the event of nonconcurrence, the SHPO's comments together with evidence that the applicant has sought the advice of the Advisory Council on Historic Preservation as to how the disagreement might be resolved and any advice provided by the Council.

(d) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674 (a) and (c) of this subpart regarding consultation with local government leaders in the preparation of its program and then consultation with local and state government pursuant to the provisions of Executive Order 12372.

(e) The applicant is to make its Statement of Activity available to the public for comment prior to submission to FmHA pursuant to § 1944.674(b) of this subpart. The preapplication must contain a description of how this was accomplished as well as a synopsis of comments received and how the comments were addressed.

(f) The applicant must submit a description of its process for determining whether an individual property requires an environmental assessment as required in § 1944.672 of this subpart.

(g) The applicant must submit an original and one copy of Form FmHA 400-1, "Equal Opportunity Agreement," and Form FmHA 400-4, "Assurance Agreement."

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 36269, Sept. 19, 1988; 55 FR 13503, Apr. 11, 1990]

§ 1944.677 [Reserved]

§ 1944.678 Preapplication submission deadline.

Dates governing the invitation and review of HPG preapplications will be published annually in the FEDERAL REGISTER and may be obtained from

FmHA State Offices. Preapplications received after the date specified in the FEDERAL REGISTER will not be considered for funding in that fiscal year and will be returned.

§ 1944.679 Project selection criteria.

(a) Grant applicants must meet all the following criteria:

(1) Provide a financially feasible program of housing preservation assistance as defined in § 1944.656(e) of this subpart;

(2) Serve eligible rural areas with a concentration of substandard housing for households with very low- and low-income;

(3) Be an eligible applicant entity as defined in § 1944.658 of this subpart; and

(4) Meet the requirements of consultation and public comment per § 1944.674 of this subpart; and

(b) For applicants meeting the requirements listed in paragraph (a) of this section, FmHA will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest ranking applicant(s) will be selected, in accordance with § 1944.680 of this subpart and the resources available to the State. For convenience, Exhibit D, "Project Selection Criteria—Outline Rating Form, may be used for the rating.

(1) Points are awarded based on the percentage of very low-income homeowners or families the applicant proposes to assist, using the following scale:

(i) More than 80%: 20 points.

(ii) 61% to 80%: 15 points.

(iii) 41% to 60%: 10 points.

(iv) 20% to 40%: 5 points.

(v) Less than 20%: 0 points.

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are awarded based on the following percentage of HPG funds to total funds:

(i) 50% or less: 20 points.

(ii) 51% to 65%: 15 points.

(iii) 66% to 80%: 10 points.

(iv) 81% to 95%: 5 points.

(v) 96% to 100%: 0 points.

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(i) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points..

(ii) The organization or a member of its staff has two or more years experience successfuly managing and operating a program assisting very low- and low-income families obtain housing assistance: 10 points.

(iii) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(4) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population): 10 points.

(5) The program will use less than 20 percent of HPG funds for administration: 5 points.

(6) The proposed program contains a component for alleviating overcrowding: 5 points.

(7) The applicant is an existing grantee and meets the conditions under § 1944.686 of this subpart for additional points: 10 points.

§ 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of § 1944.679(a) of this subpart, the State Director may not approve more than 50 percent of the State's allocation to a single applicant.

§ 1944.681 Application submission.

(a) Applicants selected by FmHA will be advised to submit a full application in an original and two copies of SF 424.2 and to include any condition or amendments that must be incorporated into the Statement of Activities prior to submitting a full application. The applicant must submit an original and one copy of Form FmHA 1940-20, "Request for Environmental Information." Instructions on submission and timing will be provided by FmHA.

(b) Applicants not selected by FmHA will be so notified and advised of their appeal rights under Subpart B of Part 1900 of this chapter.

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 36269, Sept. 19, 1988 55 FR 13504, Apr. 11, 1990]

§ 1944.682 Grant approval and requesting HPG funds.

(a) Grant approval is the process by which FmHA determines that all applicable administrative and legal conditions for making a grant have been met, the Grant Agreement is signed, and funds obligated for the HPG project. The FmHA office designated for servicing and monitoring the HPG applicant's program will review the application submission. If acceptable and if the designated office is prepared to recommend the application to the State Director for approval, the applicant will sign Form FmHA 1940-1, "Request for Obligation of Funds," and Exhibit A of this subpart, Housing Preservation Grant Agreement. If the application is approved by the State Director, the applicant will be sent a copy of the executed Grant Agreement and Form FmHA 1940-1. Should the State Director attach any conditions to the Agreement that must be satisfied prior to the applicant receiving any HPG funds, the Agreement and the conditions will be returned to the applicant for acceptance and acknowledgement on the Agreement prior to execution by the State Director.

(b) The application may be disapproved before execution of the grant agreement if the applicant is no longer eligible, the proposal is no longer feasible, or the applicant requests cancellation of its project. Except when the applicant requests cancellation, FmHA will document its findings and advise the applicant of its appeal rights under Subpart B of Part 1900 of this chapter.

(c) With the executed Grant Agreement and Form FmHA 1940-1, FmHA will send the approved applicant (now the "grantee") copies of Standard Form (SF) 270, "Request for Advance or Reimbursement." The grantee must submit an original and two copies of SF-270 to the FmHA office servicing the project. Advances or reimbursements must be in accordance with the grantee's budget and Statement of Activity, including any amendments, prior approved by FmHA. Requests for reimbursement or advances must be at least 30 calendar days apart.

(d) If the grantee fails to submit required reports pursuant to § 1944.683 of this subpart or is in violation of the Grant Agreement, FmHA may suspend HPG reimbursements and advances or terminate the grant in accordance with § 1944.688 of this subpart and the Grant Agreement.

§ 1944.683 Reporting requirements.

(a) SF-269, "Financial Status Report," is required of all grantees on a quarterly basis. Grantees shall submit an original and two copies of the report to the designated FmHA servicing office. Reports will be submitted no later than February 15, May 15, August 15 and November 15 while the grant agreement is in effect.

(b) Quarterly performance reports shall be submitted by grantees with SF-269, in an original and two copies. (See Exhibit E of this subpart, Guide for Quarterly Performance Reports.) The quarterly report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. As part of the grantee's preapplication submission, as required by § 1944.676(b) of this subpart, the grantee established its objectives for the HPG program, including its method of evaluation to determine its effectiveness. Accordingly, the report must include, but need not be limited to, the following:

(1) Use of HPG funds for adminstration and housing preservation activities.

(2) The following specific information for each unit assisted:

(i) Name, address, income, and size of each homeowner family assisted;

(ii) Total cost of unit's repair/rehabilitation, major repairs made, amount financed by HPG, and amount financed from other sources;

(iii) Type of assistance provided (interest subsidy, loan, grant, etc.); and

(iv) Results of implementing the environmental process contained in § 1944.672 of this subpart and the historic preservation process contained in § 1944.673 of this subpart.

(3) A comparison of actual accomplishments to the objectives set for that period, including:

(i) The number of very low- and low-income, minority and nonminority families assisted in obtaining adequate housing by the HPG program through repair and rehabilitation; and

(ii) The average cost of assistance provided to homeowners.

(4) Reasons why, if established objectives are not met.

(5) Problems, delays, or adverse conditions which will materially affect attainment of the HPG grant objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of program work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal or other assistance needed to relieve the situation.

(6) Objectives established for the next reporting period, sufficiently detailed to identify the type assistance to be provided, the number and type of families to be assisted, etc.

(c) The grantee should be prepared to meet with the FmHA office servicing the project to discuss its quarterly report shortly after submission.

(d) If the reports are not submitted in a timely manner or if the reports indicate that the grantee has made unsatisfactory progress or the grantee is not meeting its established objectives, the State Director will recommend appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with § 1944.688 of this subpart and the Grant Agreement.

§ 1944.684 Extending grant agreements and modifying statements of activities.

(a) All requests extending the original grant agreement or modifying the HPG program's statement of activities must be in writing. Such requests will be processed through the designated FmHA office servicing the project. The State Office will respond to the applicant within 30 days of receipt of the request in the State Office.

(b) A grantee may request an extension of the Grant Agreement prior to the end of the project term specified in the Grant Agreement if the grantee anticipates that there will be grant funds remaining and the grantee has demonstrated its ability to conduct its program in a manner satisfactory to FmHA. The State Director may approve an extension when:

(1) The grantee is likely to complete or exceed the goals outlined in the approved Statement of Activities, and

(2) The FmHA office responsible for servicing the grant recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Modifications of the Statement of Activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the State Director when the modifications are for eligible purposes per §§ 1944.664 and 1944.666 of this subpart, meet any applicable review and process requirements of this subpart, and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA prior to modifying its operation from the approved Statement of Activites.

(d) Exhibit B, "Amendment to Housing Preservation Grant Agreement," will be used for all extensions and modifications.

§ 1944.685 [Reserved]

§ 1944.686 Additional grants.

An additional HPG grant may be made to a grantee when it has achieved or nearly achieved the goals established for the previous grant. The grantee must file a new application for HPG funds that will be processed similar to an initial application and compared under the project selection criteria to others submitted at that time. Ten additional points may be given to an existing grantee where there is a continuing need for the program in the area currently being served by the existing grant, the program has local public and community support, and the grantee has fully complied with the HPG requirements contained herein.

§ 1944.687 [Reserved]

§ 1944.688 Grant evaluation, closeout, suspension and termination.

(a) Grant evaluation will be an ongoing activity performed by both the grantee and FmHA. The grantee will perform self-evaluations by preparing quarterly performance reports in accordance with § 1944.683 of this subpart. FmHA will also review all reports prepared and submitted by the grantee in accordance with the Grant Agreement and this subpart.

(b) The grant can be suspended or terminated before the grant ending date for the causes specified in the Grant Agreement. No further grant funds will be advanced when grant suspension or termination procedures have been initiated in accordance with the Grant Agreement. Grantees may be reimbursed for eligible costs incurred prior to the effective date of the suspension or termination. Grantees are prohibited from incurring additional obligations of funds after notification, pending corrective action by the grantee. FmHA may allow necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided they are for eligible HPG purposes. In the event of termination, FmHA may allow necessary and reasonable costs for an audit.

(c) Grantees will have the opportunity to appeal a suspension or termination under FmHA's appeal procedures, Subpart B of Part 1900 of this chapter.

(d) Within ninety (90) calendar days after the grant ending date, the grantee will complete the closeout procedures as specified in the Grant Agreement.

(e) The grantee will complete a final SF-269 and a final performance report upon termination or expiration of the Grant Agreement. The final performance report will serve as the last quarterly report.

(f) The grantee will have an audit performed upon termination or completion of the project in accordance with OMB Circulars Nos. A-102 or A-110, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

§ 1944.689 [Reserved]

§ 1944.690 Exception authority.

The Administrator of FmHA may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, or adversely affect the accomplishment of the purposes of the HPG program, or result in undue hardship by applying the requirement. The Administrator may exercise this exception authority at the request of the State Director. The request must be supported by information demonstrating the adverse impact, citing the particular requirement involved, recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§§ 1944.691—1944.699 [Reserved]

§ 1944.700 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0115.

Exhibits to Subpart N

Exhibit A—Housing Preservation Grant Agreement

This Agreement dated——— is between ——— (name),——— (address), (grantee), organized and operating under ——— (authorizing State statute), and the United States of America acting through the Farmers Home Administration (FmHA). FmHA agrees to grant a sum not to exceed $——— subject to the terms and conditions of this Agreement; provided, however, that the grant funds actually advanced and not needed for grant purposes shall be returned immediately to FmHA. The Housing Preservation Grant (HPG) Statement of Activities approved by FmHA, is attached, and shall commence within 10 days of the date of execution of this agreement by FmHA and be completed by ——— (date). FmHA may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this Grant Agreement or FmHA regulation related hereto. The grantee may appeal adverse decisions in accordance with the FmHA Appeal Procedures contained in Subpart B of Part 1900 of this chapter.

In consideration of said grant by FmHA to the Grantee, to be made pursuant to section 533 of the Housing Act of 1949, Housing Preservation Grant (HPG) program, the grantee will provide such a program in accordance with the terms of this Agreement and applicable FmHA regulations.

Part A—Definitions

1. "Beginning date" means the date this agreement is executed by FmHA and costs can be incurred.

2. "Ending date" means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. "Disallowed costs" are those charges to a grant which the FmHA determines cannot be authorized in accordance with applicable Federal cost principles contained in Treasury Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," OMB Circular A-87, "Cost Principles for State and Local Governments," OMB Circular A-122, "Cost Principles for Nonprofit Organizations," and other conditions contained in this Agreement and OMB Circular A-102 "Uniform Requirements for Grants to State and Local Governments," and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, Uniform Administrative Requirements," as appropriate.

4. "Grant closeout" is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. "Termination" of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

Part B—Terms of agreement

FmHA and grantee agree:

1. All grant activities shall be limited to those authorized in Subpart N of 7 CFR Part 1944.

2. This Agreement shall be effective when executed by both parties.

3. The HPG activities approved by FmHA shall commence and be completed by the date indicated above, unless earlier terminated under paragraph B 18 below or extended.

4. Grantee shall carry out the HPG activities and processes as described in the approved Statement of Activities which is made a part of this Agreement. Grantee will be bound by the activities and processes set forth in the Statement of Activities and the further conditions set forth in this Agreement. If the Statement of Activities is inconsistent with the Agreement, the latter will govern. A change of any activities and processes must be in writing and must be signed by the FmHA State Director or his or her delegated representative.

5. Grantee shall use grant funds only for the purpose and activities approved by FmHA in the HPG budget. Any uses not provided for in the approved budget must be approved in writing by FmHA in advance.

6. If the Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA employees for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the FmHA rates will be the maximum allowed.

7. Grant funds will not be used for any of the following:

(a) To pay obligations incurred before the effective date of this Agreement.

(b) To pay obligations incurred after the grant termination or ending date.

(c) Entertainment purposes.

(d) To pay for capital assets, the purchase of real estate or vehicles, improvement or renovation of grantee's office space, or repair or maintenance of privately owned vehicles.

(e) Any other purpose specified in §§ 1944.664(f) and 1944.666(b) of this subpart.

(f) Administrative expenses exceeding 20% HPG grant funds.

8. Grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. Disbursal of grants will be governed as follows:

(a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated to OMB Circular A-102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A-110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's Statement of Activity and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days from the date of the Treasury check, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to FmHA that all officers of the Grantee organization authorized to receive and/or disburse Federal funds are covered by satisfactory fidelity bonds sufficient to protect FmHA's interests.

10. The grantee will submit performance and financial reports as indicated below to the appropriate FmHA office.

(a) As needed, but not more frequently than once every 30 calendar days, an original and 2 copies of SF-270, "Request for Advance or Reimbursement."

(b) Quarterly (not later than February 15, May 15, August 15, and November 15 of each year), an original and 2 copies of SF-269, "Financial Status Report," and a quarterly performance report in accordance with § 1944.683 of this subpart.

(c) Within ninety (90) days after the termination or expiration of the Grant Agreement, an original and 2 copies of SF-269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee for HPG. Final reports may serve as the last quarterly report.

(d) FmHA may require performance reports more frequently if deemed necessary.

11. In accordance with FMC Circular 74-4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval by FmHA.

13. Results of the program assisted by grant funds may be published by the grantee without prior review by FmHA, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, as amended, and that five copies of each such publications are furnished to FmHA.

14. Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

15. No person in the United States shall, on the grounds of race, creed, color, sex, marital status, age, national origin, or mental or physical handicap, be excluded from participating in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of FmHA contained in Subpart E of Part 1901 of this chapter.

16. In all hiring or employment made possible by or resulting from this grant, the grantee: (a) Will not discriminate against any employee or applicant for employment because of race, creed, color, sex, marital status, national origin, age, or mental or physical handicap, and (b) will take affirmative action to insure that employees are treated during employment without regard to their race, creed, color, sex, marital status, national origin, age, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or

other forms of compensation; and selection for training, including apprenticeship. In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the "Equal Employment Clause" as specified by Form FmHA 400-1, "Equal Employment Agreement."

17. The grantee accepts responsibility for accomplishing the HPG program as submitted and included in the Statement of Activities. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to FmHA on the status of grantee HPG programs, projects, related activities, and problems.

(c) The grantee shall inform FmHA as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any FmHA assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. Grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to FmHA any uncommitted balance of grant funds.

(ii) The grantee will furnish to FmHA within 90 calendar days after the date of completion of the grant an SF-269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

(iii) The grantee shall account for any property acquired with HPG grant funds, or otherwise received from FmHA.

(iv) After the grant closeout, FmHA retains the right to recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this Agreement, the State Director can, on reasonable notice, suspend the grant pending corrective action or terminate the grant pursuant to paragraph (c) below. In such instances, FmHA may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. FmHA will withhold further advances and grantees are prohibited from further obligating grant funds pending corrective action.

(c) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole or in part at any time before the date of completion, whenever FmHA determines that the grantee has failed to comply with the terms of this Agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by FmHA or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA in connection with any FmHA programs.

(F) Failure to maintain an accounting system acceptable to FmHA.

(ii) *Termination for convenience.* FmHA or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) FmHA shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination. Except for termination convenience, grantees have the opportunity to appeal a suspension or termination under FmHA's appeal procedure, Subpart B of Part 1900 of this chapter.

19. Upon any default under its representatives or agreements set forth in this instrument, the grantee, at the option and demand of FmHA, will, to the extent legally permissible, repay to FmHA forthwith the grant funds received with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by FmHA, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal

or State Courts, as may be deemed necessary by FmHA to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

20. Extension of this Grant Agreement and/or modifications of the Statement of Activities may be approved by FmHA provided, in its opinion, the extension and/or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the Statement of Activities during the period of the extension and/or modifications as specified in § 1944.684 of this subpart.

Part C—Grantee agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A-102 or Attachment N of OMB Circular A-110 for State and local governments or nonprofit organizations respectively. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definitions of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of paragraph 1(c) below.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the grantee has title.

(i) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA.

(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original Grantor agency. FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the grantee no later than 120 calendar days after the grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal shares $100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(B) If the grantee is instructed to dispose of the property other than as described in paragraph 1(a)(iv) above, the grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(C) The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*1*) Property records shall be maintained accurately and shall include:

(*a*) A description of the property.

(*b*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*c*) Sources of the property including grant or other agreement number.

(*d*) Whether title vests in the grantee or the Federal Government.

(*e*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*f*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(*g*) Location, use, and condition of the property and the date the information was reported.

(*h*) Unit acquisition cost.

(*i*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a grantee compensates the Federal agency for its share.

(*2*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*3*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*4*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify FmHA.

(*5*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*6*) When the grantee is authorized or required to sell the property, proper sales procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

(*7*) Expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to Part B (10)(c) of this Agreement except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, audit or investigation findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by FmHA, the three year retention requirement is not applicable.

(c) When records are transferred to or maintained by FmHA, the three year retention requirement is not applicable.

Microfilm copies may be substituted in lieu of original records. FmHA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by FmHA concerning the grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by FmHA or acquired wholly or in part with HPG funds without the written consent of FmHA except as provided in Part C 1 of this Agreement.

6. To provide FmHA with such periodic reports of grantee operations as may be required by authorized representatives of FmHA.

7. To execute Form FmHA 400-1, and to execute any other agreements required by FmHA to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1875C-9 as amended. Violations shall be reported to FmHA and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

12. That the grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

13. That the grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment O, or OMB Circular A-110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

14. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 et seq., and related regulations, and that all rights granted to FmHA herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and project FmHA's financial interest.

15. That it will adopt a Standard of Conduct that provides that, if an employee, officer, or agent of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (i.e., partnerships, corporation, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving HPG assistance.

Part D—FmHA agrees

1. That it may assist grantee, within available appropriations, with such technical and management assistance as needed in coordinating the Statement of Activities with local officials, comprehensive plans, and any State or area plans for improving housing for very low- and low-income households in the area in which the project is located.

2. That at its sole discretion, FmHA may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect FmHA's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and FmHA regulations.

This Agreement is subject to current FmHA regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this Agreement to be executed by its duly authorized ———, properly attested to and its corporate seal affixed by its duly authorized ———.

Attest:
Grantee:
By ————————————————
(Title) ————————————————

United States Of America Farmers Home Administration.
By ————————————————
(Title) ————————————————

Date of Execution of Grant Agreement by FmHA:

————————————————

Attached Statement of Activities Is Made Part of This Agreement.

EXHIBIT B—AMENDMENT TO HOUSING PRESERVATION GRANT AGREEMENT

This Amendment between ———herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "FmHA," hereby amends the Housing Preservation Grant Agreement executed by said parties on ———, 19—, hereinafter called the "Agreement."

Said Agreement is amended by extending the Agreement to ———, 19—, and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Grantee has caused this Agreement to be executed by its duly authorized ———, properly attested to and its corporate seal affixed by its duly authorized ———.

Attest:
Grantee:
By ————————————————
(Title) ————————————————

United States Of America Farmers Home Administration.
By ————————————————
(Title) ————————————————

Date of Execution of Amendment to Grant Agreement by FmHA: ———.

————————————————

EXHIBIT C—[RESERVED]

EXHIBIT D—PROJECT SELECTION CRITERIA OUTLINE RATING FORM

Applicant Name ———————
Applicant Address ———————
Application received on ———.
State ——— District Office ———.

Threshold Criteria

Applicant must meet the following:

1. Proposes a financially feasible HPG program ..... yes— no—
2. Serves an eligible rural area .... yes— no—
3. Is an eligible HPG grantee .... yes— no—
4. Has met consultation and public comment rules .... yes— no—

If answer to any of the above is "no", application is rejected and applicant so notified.

Selection Criteria:

Select the appropriate rating:

1. Points awarded based on the percentage of very-low income homeowners or families the applicant proposes to assist, using the following scale ———:

(a) More than 80%: 20 points.
(b) 61% to 80%: 15 points.
(c) 41% to 60%: 10 points.
(d) 20% to 40%: 5 points.
(e) Less than 20%: 0 points.

2. Points awarded based on the applicant's percentage of use of HPG funds to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are based on the following percentage of HPG funds to total funds ———:

(a) 50% or less: 20 points.

(b) 51% to 65%: 15 points.

(c) 66% to 80%: 10 points.

(d) 81% to 95%: 5 points.

(e) 96% to 100%: 0 points.

3. The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(a) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program ———:

Yes—10 points.

No—0 points.

(b) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income families obtain housing assistance ———:

Yes—10 points.

No—0 points.

(c) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal ———:

No findings: 10 points.

Outstanding findings: 0 points.

4. The proposed program will be undertaken *entirely* in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) ———:

Non-MSA area below 10,000 pop.: 10 points.

MSA area below 5,000 pop.: 10 points.

Neither: 0 points.

5. The program will use less than 20 percent of HPG funds for administration ———:

Less than 20%: 5 points.

20%: 0 points.

6. The proposed program contains a component for alleviating overcrowding ———:

Has component: 5 points.

No component: 0 points.

7. The applicant is an existing grantee and meets the conditions of § 1944.686 of this subpart for additional points ———:

Meets conditions: 10 points.

Doesn't meet conditions: 0 points.

Total Points ———:
Ranking of This Applicant ———

EXHIBIT E—GUIDE FOR QUARTERLY PERFORMANCE REPORT

Grantee name: ————————————
Grantee address: ———————————
Grant quarter: ————————————
Report Period: From: ——— To: ———

I. General Information on Use of HPG Funds During Period:

A. Use of Administrative Funds:
Budgeted Amount........................ $———
Expended Thru Last Quarter.............. ———
Direct Cost:
Personnel................................ $———
Supplies & Equip........................ ———
Travel.................................. ———
Indirect Costs:
(———% Rate)............................ ———
This Quarter Total...................... ———
B. Use of Program Funds:
Budgeted Amount......................... ———
Expended Thru Last Quarter.............. ———
Loans.................. No. ——— $ ———
Grants................. No. ——— ———
Other subsidies
(describe briefly)..... No. ——— ———
This Quarter Total................ ———

II. Description of recipients provided assistance during report period: (Attach breakdown for each HPG recipient on separate page including name, address, income, size, race, housing preservation activities, and type of assistance received):

Number of low-income homeowners assisted........................ ———
Number of very low-income homeowners assisted.................. ———
Total number of homeowners assisted........................ ———
Racial composition:
White.................................. ———
Black.................................. ———
Hispanic............................... ———
Am. Indian............................. ———
Other.................................. ———

III. Description of types of housing preservation provided:

Housing preservation activity		Financial assistance		
Item	Cost of materials/ labor	HPG	Other	Total

IV. Objectives for next period:

Loans..No. ——— $———
Grants.......................................No. ——— $———
Other subsidy.........................No. ——— $———
Totals.............................No. ——— $———

V. Project summary:

	No. homeowners	HPG funds	Other
Assistance objectives of project		$———	$———
Assistance to date		———	———
Assistance during next period		————	————
Average amount of HPG assistance			
Per unit provided (program to date) (per unit)	$———		

VI. Narrative:

A. Significant accomplishments.

B. Problem areas.

C. Proposed changes/assistance needed, etc.

D. Status of implementing environmental and historic preservation requirements. Include number of historic properties assisted.

PART 1945—EMERGENCY

Subpart A—Disaster Assistance—General

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1945.1 [Reserved]
1945.2 Purpose.
1945.3—1945.4 [Reserved]
1945.5 Abbreviations.
1945.6 Definitions.
1945.7—1945.17 [Reserved]
1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).
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1945.22—1945.24 [Reserved]
1945.25 Relationship between FmHA and FEMA.
1945.26 Relationship between FmHA and SBA.
1945.27 Relationship between FCIC and FmHA.
1945.28 Relationship between ASCS and FmHA.
1945.29 [Reserved]
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1945.32—1945.34 [Reserved]
1945.35 Special EM loan training.
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1945.45 Public information function.
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Subpart B—[Reserved]

Subpart C—Economic Emergency Loans

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1945.111 Receiving and processing applications.
1945.112 Eligibility.
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1945.116 Loan purposes.
1945.117 Loan limitations and special provisions.
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1945.120 Collateral requirements.
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1945.124—1945.125 [Reserved]
1945.126 Cancellation of loan checks and advances.
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1945.128 Docket preparation.
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1945.145 OMB control number.
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1945.148 FmHA Forms.
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1945.151 Introduction.
1945.152 Program objectives.
1945.153 Loans for citrus grove rehabilitation or reestablishment.
1945.154 Definitions and abbreviations.

Sec.
1945.155 Relationship between FmHA and other federal agencies.
1945.156 The test for credit and certification requirements for availability of credit elsewhere.
1945.157–1945.160 [Reserved]
1945.161 Receiving and processing applications.
1945.162 Eligibility requirements.
1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.
1945.164–1945.165 [Reserved]
1945.166 Loan purposes.
1945.167 Loan limitations and special provisions.
1945.168 Rates and terms
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1945.170–1945.172 [Reserved]
1945.173 General provisions—compliance requirements.
1945.174 [Reserved]
1945.175 Options, planning, and appraisals.
1945.176–1945.179 [Reserved]
1945.180 County Committee certification.
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1945.182 Loan docket preparation.
1945.183 Loan approval or disapproval.
1945.184 [Reserved]
1945.185 Actions after loan approval.
1945.186–1945.187 [Reserved]
1945.188 Chattel lien search.
1945.189 Loan closing.
1945.190 Revision of the use of EM loan funds.
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1945.192 Loan servicing.
1945.193–1945.199 [Reserved]
1945.200 OMB control number.

EXHIBITS TO SUBPART D

EXHIBITS A AND C—[RESERVED]
EXHIBIT D—EMERGENCY LOANS FOR CITRUS GROVE REHABILITATION AND/OR REESTABLISHMENT

AUTHORITY: U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

SOURCE: 46 FR 28331, May 26, 1981, unless otherwise noted.

Subpart A—Disaster Assistance—General

SOURCE: 53 FR 30384, Aug. 11, 1988, unless otherwise noted.

§ 1945.1 [Reserved]

§ 1945.2 Purpose.

This subpart describes and explains the types of incidents which can result in an area being determined a disaster area, thereby making qualified farmers in such areas eligible for Farmers Home Administration (FmHA) Emergency (EM) loans. With respect to natural disasters, it sets forth the responsibility of the Secretary of Agriculture; the factors used in making a natural disaster determination; the relationship between FmHA and the Federal Emergency Management Agency (FEMA); the method for establishing and using Emergency Loan Support Teams (ELST) and Emergency Loan Assessment Teams (ELAT); the training of FmHA personnel; and disaster related public information functions. The natural disaster determinations/notifications made under this subpart do not apply to any program other than the FmHA EM loan program. FmHA's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract) as provided by law.

§§ 1945.3—1945.4 [Reserved]

§ 1945.5 Abbreviations.

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) DAR—Damage Assessment Report.

(c) ELAT—Emergency Loan Assessment Team.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency.

(f) EOH—USDA Emergency Operations Handbook.

(g) FAC—Food and Agriculture Council.

(h) FCIC—Federal Crop Insurance Corporation.

(i) FCO—Federal Coordinating Officer.

(j) FEMA—Federal Emergency Management Agency.

(k) FmHA—Farmers Home Administration.

(l) LFAC—Local Food and Agriculture Council.

(m) NASS—State Statistical Office of the USDA National Agricultural Statistics Service.

(n) OMB—Office of Management and Budget.

(o) SBA—Small Business Administration.

(p) SFAC—USDA State Food and Agriculture Council.

(q) USDA—United States Department of Agriculture.

§ 1945.6 Definitions.

The following definitions are applicable to this subpart:

(a) *Applicant.* The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA.

(b) *County.* A local administrative subdivision of a State or a similar political subdivision of the United States.

(1) *Primary county.* A county determined to be a disaster area.

(2) *Contiguous county.* A county that touches a primary county at any point.

(c) *Disaster.* A natural disaster, as determined by the Secretary of Agriculture or the FmHA Administrator, or a major disaster or emergency declared by the President.

(1) *Major disaster.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the "Disaster Relief Act of 1974," above and beyond normal emergency services available from Federal, State and local governments.

(2) *Presidential emergency.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which is of such magnitude that the President makes a declaration requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3) *Natural disaster.* A disaster in any part of the United States in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical property losses and/or severe production losses within a county. Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

(i) Unusual and adverse weather conditions or natural phenomena include such things as:

(A) A major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado.

(B) A single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind.

(C) An electrical storm.

(D) A severe weather pattern over a period of time which, due to excessive rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

(ii) Severe *physical* property losses are those which the Administrator determines prior to a natural disaster determination by the Secretary, to be severe, and to have caused extensive damage to or destruction of, physical farm property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock, livestock products; poultry; poultry products; growing crops (see § 1945.163(b)(11) of Subpart D of Part 1945 of this chapter); harvested crops, and supplies which, if not repaired or replaced, would make it impossible for farmers affected by the unusual and adverse weather conditions to continue operating their farms on a sound basis.

(iii) Severe *production* losses within a county are those in which either:

(A) The Secretary determines that there has been a reduction countywide of at least 30 percent of the normal year's dollar value of all crops, including hay and pasture, and the crops could not be replanted or replaced with a substitute crop, or

(B) The Secretary determines that there has been a 30 percent loss countywide in the normal year's dollar value of a single enterprise (as defined in § 1945.154(a)(13)(i) of Subpart D of Part 1945 of this chapter); or

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in § 1945.6(c)(3)(iii)(A) and (B) of this subpart have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator to provide for consideration such factors as the nature and extent of production losses; the number of farmers who have sustained qualifying production losses; the number of farmers in that other lenders in the county indicate they will not be in position to finance; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and any other factors considered relevant. The Secretary will consider the information set forth in § 1945.6(i) of this subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomena that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Administrator for consideration as a natural disaster.

(d) *Disaster area(s).* The county(ies) declared/designated as a disaster area for EM loan assistance as a result of disaster related losses. This included counties named as contiguous to those counties declared/designated as disaster areas.

(e) *Farmers.* Individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

(f) *Incidence period.* The specific date or dates during which a disaster occurred.

(g) *National Office.* The Director, Emergency Designation Staff.

(h) *Normal year's dollar value.* The FmHA National Office will determine the normal year's dollar value by establishing a normal year yield and price. Normal year yield will be the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county. The price will be the average commodity price for the 36 months immediately preceding the disaster year for each crop. Yields and prices used to establish the value or normal production will be obtained from the NASS. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources. Yields used to establish the disaster year's production will be obtained from DARs which are prepared by the LFACs and SFACs. Prices used to establish the value of disaster year production will be the same as those used to establish normal year values.

(i) *Substantially affected.* A farmer applicant has been substantially affected when there has been a disaster as defined in paragraph (c) of this section, and the applicant has sustained qualifying physical and/or production losses, as defined in § 1945.154(a) of Subpart D of Part 1945 of this chapter.

(j) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date will be 8 months from the date of the disaster declaration/determination/notification.

(k) *United States or State.* Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§§ 1945.7—1945.17 [Reserved]

§ 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).

There is a USDA FAC established by the Secretary to serve every State and every County in the United States. The FACs are responsible for reporting the occurrence of and assessing the damage caused by potential disasters, as required to ensure that the Department's disaster programs are implemented when and where needed; to coordinate the Department's EM disaster programs with those of other Federal departments and agencies; and to provide personnel, as needed and requested by FEMA, to help staff disaster application centers in major disaster areas.

(a) *State Food and Agriculture Council (SFAC).* The SFACs are composed of representatives of the several USDA agencies having emergency program responsibilities at the State level. The vice chairpersons, Emergency Programs, of the SFACs are the ASCS State Executive Directors. FmHA State Directors are members of the SFACs.

(b) *Local Food and Agriculture Council (LFAC).* These councils are composed of representatives of the several USDA agencies having available personnel at the County level. The chairpersons of the LFACs, in most cases, are the ASCS County Executive Directors. The FmHA County Supervisors are members of the LFACs.

(c) *FAC policies and procedures.* These policies and procedures are set forth in the USDA Emergency Operations Handbook (EOH), available in any ASCS or FmHA Office.

§ 1945.19 Reporting potential natural disasters and initial actions.

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such events which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SFACs and LFACs representing their members agencies are best qualified at the State and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These councils are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) When physical losses only occur, the FmHA County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with physical property losses to one or more farmers. *This report must be made to the Administrator within 3 months from the last day of the disaster incidence period. Upon receiving the report, the Administrator will decide whether a natural disaster has occurred. If it has, the Administrator will make EM loans available to any otherwise qualified applicant who has suffered qualifying physical losses. Availability of EM loans assistance under this Administrator action shall be limited to physical losses only.* Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon has occurred and also each contiguous county.

(2) When physical and/or production losses occur, the FmHA County Supervisor will report to the LFAC chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the LFAC in preparing the 24-hour report required in paragraph (c)(3) of this section. If the LFAC has not completed its 24 hour report within two workdays after the occurrence of a potential natural dis-

aster, the County Supervisor will report to the State Director of Form FmHA 1945-27, "Report of Natural Disaster." In urgent situations, the report may be made by telephone, followed by the LFAC report or Form FmHA 1945-27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the LFAC chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA 1945-27, if prepared.

(3) The LFAC will report the potential natural disaster, in accordance with the EOH, to:

(i) The SFAC, Vice Chairperson; and

(ii) Appropriate County Government representative(s).

(4) The SFAC will provide copies of the LFAC report to:

(i) The USDA Washington Offices of ASCS, FmHA and Office of Intergovernmental Affairs; and

(ii) The State Governor's Emergency Coordinator and the State Department of Agriculture.

(5) The FmHA State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the LFAC report or Form FmHA 1945-27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Designation Staff, by telephone, and immediately thereafter send a written report to the National Office, Emergency Designation Staff. The State Director will continually notify the SFAC Vice Chairperson, Emergency Programs, of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

(i) By the County Office:

(A) The kind of assistance that will be available if the President declares a major disaster or emergency, or if the Secretary determines that a natural disaster has occurred.

(B) Whether or not physical property loss EM loans are available.

(C) That applications for EM loans may be filed for future processing if such loans are made available, or may be filed at a later date after the necessary determinations have been made.

(D) Whether regular FmHA farm loan assistance is available.

(ii) State Office, or the National Office, will furnish the same information as the County Office, or will refer the person to the appropriate County Office.

(7) When inquiries are received from a Governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

(8) The actions required in paragraph (b) of this section will be taken even if the Governor of a State has requested the President to declare a county(ies) a major disaster or Presidential emergency area.

§ 1945.20 Making EM loans available.

EM loans will be made available to applicants having qualifying severe physical and/or production losses within a county named by FEMA as eligible for Federal assistance under a major disaster or emergency declaration by the President; or under a natural disaster determination by the Secretary of Agriculture, pursuant to § 1945.6(c)(3)(iii) of this subpart; and to applicants having qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA Administrator has determined (pursuant to § 1945.6(c)(3)(ii) of this subpart) that such losses have occurred as a result of a natural disaster. Any determination made by the Secretary or the Administrator, pursuant to this subpart may be revised or reversed upon the receipt of new facts which establish that a change is warranted. FmHA's policy is to make loans to any otherwise qualified applicant. When a county has been designated/declared a disaster area where eligible farmers may qualify for EM loans due to a disaster(s) occurring on or after May 31, 1983, under this section, all other counties contiguous to the eligible county(ies) are also named as areas where EM actual loss loans may be made to applicants whose operations have been substantially affected by the same disaster(s).

(a) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FEMA has notified the FmHA National Office, the following actions will be taken:

(1) The National Office will immediately:

(i) Notify the State Director and the Director, Finance Office by telephone and confirm by electronic message. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined eligible for Federal disaster assistance;

(C) The type of disaster;

(D) The incidence period for the disaster;

(E) The termination date for accepting applications; and

(F) The disaster declaration number [Examples: Major Disasters, M491; or Presidential Emergency, E061].

(ii) Take the actions required by § 1945.21(a)(1) of this subpart.

(2) The State Director will immediately:

(i) Notify the appropriate County Supervisor(s) to make EM loans available in the declared counties, and confirm this notification by a State supplement containing information listed in paragraphs (a)(1)(i) (A) through (F) of this section.

(ii) Notify the SFAC Vice Chairperson, Emergency Programs, in writing; and

(iii) Prepare the public announcements deemed appropriate to inform the farm community, and coordinate the issuance of such announcements with FEMA's Public Information Officer.

(3) The County Supervisor will immediately upon receiving notification that the county(ies) has been declared a disaster area:

(i) Notify the Chairperson LFAC in writing;

(ii) Make such public announcements as seem appropriate to adequately inform the local farm community;

(iii) Arrange and conduct meetings with local agricultural lenders and agricultural leaders within 10 working days after the disaster declaration date to explain the purpose and the assistance available under the EM loan program; and

(iv) Be available to help staff the FEMA disaster assistance centers, when requested to do so.

(b) *Determination by the Secretary of Agriculture.* When a potential disaster has substantially affected farmers, causing qualifying severe losses and it is requested by a Governor or Indian Tribal Council that there be a determination that a natural disaster has occurred, *the Secretary will acknowledge the request in writing and consider whether a determination should be made, provided the Secretary receives such request in writing within three months of the last day of the occurrence of such potential disaster.* The Governor or Indian Tribal Council should send a copy of the request to the FmHA State Director. When the Secretary finds based on the material received pursuant to this subpart that the conditions of § 1945.6(c)(3)(iii) (A) or (B) have been met, it shall be announced that a natural disaster has occurred. Also, if on finding that the conditions of § 1945.6(c)(3)(iii)(C) of this subpart so warrant, the Secretary may determine that a natural disaster has occurred.

(1) Upon receipt of the Governor's or Indian Tribal Council's request through the Secretary's Office, the FmHA National Office will immediately take the following actions:

(i) Notify the State Director by telephone of the Governor's request.

(ii) Obtain an immediate report from the State Director on whether there have been severe physical property losses within each of the counties requested by the Governor or Indian Tribal Council.

(iii) Obtain a report from the State Director on production losses.

(2) The State Director will immediately:

(i) Notify the SFAC Vice Chairperson, Emergency Programs, that a DAR is needed, unless the Governor has already made such request to the SFAC Vice Chairperson, in accordance with the EOH for the requested county(ies); and

(ii) Advise the National Office on whether qualifying physical property losses have occurred.

(iii) Review each DAR, as soon as it is available, and forward it to the National Office with written comments on the extent of probable qualifying production losses, and other factors which are recommended for consideration by the Secretary in making determinations under § 1945.6(c)h3) of this subpart. The State Director will also submit to the National Office a list of all agricultural commodities produced in the State, giving the average yearly prices for each commodity for the three years immediately preceding the disaster year; the county average yields for each commodity for the five years immediately preceding the disaster year; and any additional supportive information. Yields and prices data will be used to establish the normal year's production and will be obtained from the USDA National Agricultural Statistics Service (NASS) by the State Director. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources.

(iv) Upon receipt of the Administrator's request for a survey in connection with a request by the Secretary for information needed concerning § 1945.6(c)(3)(iii)(C), expeditiously gather and compile the information requested and submit it to the Administrator with a recommendation. The survey will be conducted in a manner jointly agreed upon by the Administrator and the State Director.

(3) The National Office will:

(i) Immediately use the State Director's report and accompanying price and yield information to analyze and verify losses reported in the DAR(s), along with any other information and comments provided by the State Director.

(ii) Promptly forward a written report to the Secretary, along with supporting information, for use by the Secretary in making a decision on the requested natural disaster determination.

(4) The Secretary will review the results of the survey and determine whether a natural disaster has occurred.

(i) When the Secretary determines that a natural disaster has occurred:

(A) The Administrator will be directed to make EM loans available in the county(ies) named by the Secretary, as provided by law.

(B) The Administrator will notify the State Director, by electronic message, of the Secretary's decision. Such notice *will not* be given to the State Director until the Secretary has notified the Governor or Indian Tribal Council, from whom the natural disaster determination request was received.

(C) The National Office will immediately pursue the same course of action as described in paragraph (a)(1) of this section, except the disaster determination number will be coded S and three numbers (Example S141).

(D) The State Director will immediately pursue the same course of action as described in paragraph (a)(2) of this section.

(E) The County Supervisor will immediately pursue the same course of action as described in paragraph (a)(3) of this section.

(ii) When the Secretary determines that the conditions in § 1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides to consider other factors in accordance with § 1945.6(c)(3)(iii)(C) of this subpart, the Secretary will:

(A) Request the Administrator to provide additional information for consideration through an actual survey of farmers and lending institutions in the county(ies) requested to be determined a natural disaster area.

(B) The Administrator will instruct the State Director to conduct the survey focusing on such factors as:

(*1*) The nature and extent of production losses;

(*2*) The number of farmers who have sustained qualifying production losses;

(*3*) The number of farmers in paragraph (b)(4)(ii)(B)(*2*) of this section that other lenders in the County Office area indicate they will not be in a position to finance;

(*4*) Whether the losses will cause undue hardship to a certain segment of farmers in the county;

(*5*) Whether damage to particular crops has resulted in undue hardship;

(*6*) Whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and

(*7*) Any other factors considered relevant.

(iii) If the Secretary finds that the conditions of § 1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides that the conditions do not warrant a natural disaster finding under § 1945.6(c)(3)(iii)(C) of this subpart, the Governor or Indian Tribal Council and other concerned officials will be notified of this and the reason(s) for the Secretary's conclusions.

(c) *Notification by the FmHA Administrator.* When the Administrator determines that an unusual and adverse weather condition or natural phenomenon has substantially affected farmers, causing qualifying severe *physical losses*, the Administrator will make EM physical loss loans available in the county(ies) identified and notify the State Director by electronic message.

(1) The Administrator, upon notifying the State Director that EM physical loss loans are to be made available, will issue the following:

(i) The Administrator's notification number (Example: N181);

(ii) The incidence period for the natural disaster; and

(iii) The termination date for accepting applications.

(2) The State Director upon receiving written notification by electronic message from the Administrator will notify:

(i) Appropriate County Supervisor(s) to commence processing EM loan applications in appropriate county(ies).

(ii) The SFAC Vice Chairperson, Emergency Programs; and

(iii) The news media with appropriate announcements.

(3) The Administrator will notify the Office of the Secretary of Agriculture of any action taken concerning *physical* property losses. The National Office will also provide the same information to the appropriate Governor or Indian Tribal Council, FEMA, ASCS, SBA and other concerned officials at their request.

(4) Upon notification from the State Director that EM loans are available in a county, the County Supervisor will pursue the course of action described in § 1945.20(a)(3) of this subpart.

(d) *Relationship between Administrator's notification and Secretary's determination.* Both the Administrator and the Secretary can make natural disaster determinations affecting the same county:

(1) When the Administrator has made physical loss loans available pursuant to § 1945.6(c)(3)(ii), and the Secretary later makes production loss loans available pursuant to § 1945.6(c)(3)(iii) on the basis of the same unusual and adverse weather condition or natural phenomenon, such physical and production losses will be considered to be caused by a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(2) When a series of unusual and adverse weather conditions or natural phenomena occur in a county within the same crop year, and it is not possible for the Secretary to assess the damages in order to determine whether the conditions in § 1945.6(c)(3)(iii) have been met until the end of such series or the crop year, a determination that a natural disaster has occurred shall be considered for both physical property and production losses to be due to a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e)

of Subpart D of Part 1945 of this chapter.

(e) *Extension of termination dates for continuing disaster conditions.* When a natural disaster continues beyond the date on which an Administrator's notification or Secretary's determination is made, and when there are continuing losses or damages caused by that disaster, the Administrator will extend the incidence period and the termination date for such specified period as the Administrator finds appropriate, but not in excess of 60 days. The following actions will be taken to obtain an extension:

(1) The County Supervisor will advise the State Director of the conditions for which an extension is requested.

(2) The State Director will make a recommendation to the Administrator on whether an extension should be granted; and

(3) The Administrator will, if the request is granted:

(i) Amend the initial notification/determination (using the same number) by establishing a new incidence period and termination date; and

(ii) Notify the State Director by electronic message.

(f) *Limitations.* When actions are authorized by the Secretary or the Administrator under paragraphs (b) or (e) of this section, such actions will ordinarily be completed within six months after the beginning date of the incidence period of a reported disaster, except when the actions required in paragraph (b)(2) of this section cause a delay beyond the six months period, in which event the actions must be completed within nine months of the beginning date of the incidence period. The Secretary may extend this limitation up to 12 months from the beginning date of the incidence period if there were other exceptional causes for the delay.

§ 1945.21 Reporting and coordination requirements.

After EM loans are made available under § 1945.20 of this subpart, the following actions will be taken immediately:

(a) *By the National Office.* The Administrator or a designee will:

(1) Submit weekly reports to the following, informing them of the past week's disaster actions taken by FmHA. If no actions are taken in any particular week, negative reports will be made:

(i) The Secretary of Agriculture or the Secretary's designee;

(ii) The Director of the FmHA Finance Office;

(iii) The FEMA;

(iv) The SBA Central Office;

(v) The ASCS National Office;

(vi) The FCIC National Office;

(vii) The OMB;

(viii) The National Oceanic and Atmospheric Administration; and

(ix) The Office of Governmental and Public Affairs.

(2) The weekly reports will contain the following information:

(i) The date of the declaration/determination/notification;

(ii) The name(s) of any county(ies) in which EM loans are available;

(iii) The nature of the damages and losses; and

(iv) The termination data for accepting EM loan applications.

(b) *By the State Director.* (1) Notify the appropriate County Supervisor(s) of the:

(i) Name(s) of any county(ies) in which EM loans are available;

(ii) Date of the declaration/determination/notification;

(iii) Disaster number;

(iv) Type of disaster;

(v) Incidence period; and

(vi) Termination date for accepting applications.

(2) Notify the State ASCS Executive Director of the authority to make EM loans. Promptly have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000-JJ (available in any FmHA office). Arrive at a mutual understanding as to how ASCS disaster program benefits are to be handled in conjunction with the processing of FmHA EM actual loss loans, so that duplication of benefits for the same losses are not received by disaster victims;

(3) Contact the FCIC Field Operations Office Director to review the

Memorandum of Understanding between FCIC and FmHA, Exhibit A of FmHA Instruction 2000-N (available in any FmHA office), and arrive at a mutual understanding as to how FCIC indemnity payments are to be handled in conjunction with the processing of EM actual loss loans so that duplication of benefits for the same losses are not received by disaster victims;

(4) Make appropriate public announcements, including notices in Indian Tribal Council(s) news media. However, if the declaration was by the President, under § 1945.20(a) of this subpart, news releases should be cleared with the FEMA; and

(5) If the FEMA notifies the State Director that an agreement between the State and Federal Government (FEMA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property, who *are ineligible* for disaster loan assistance through the FmHA and/or SBA, the following actions will be taken:

(i) The State Director will notify the appropriate County Supervisor(s) of the address and phone number of the nearest FEMA office in the Supervisor's area; and

(ii) At the close of business each week, the County Supervisor(s) will forward to the State Director a list of applicants claiming physical losses who *do not qualify for EM* loan assistance, with the reason(s) they do not qualify; and

(iii) The State Director will immediately summarize the information received from the County Supervisors and forward a report to FEMA.

(c) *By the County Supervisor.* (1) Notify the County ASCS Executive Director of the declaration/determination/notification and have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000-JJ (available in any FmHA office), to arrive at a mutual understanding as to how ASCS disaster program benefits and other information in ASCS's records will be made available and used in processing EM actual loss loans. Also, the County Supervisor will request that information regarding the availability of EM loans be placed in the ASCS's newsletter;

(2) Notify the County Governing Body, Indian Tribal Council(s), and make appropriate public announcements including notices in Indian Tribal Council(s') news media; and

(3) Explain the assistance available under the EM program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders.

§§ 1945.22—1945.24 [Reserved]

§ 1945.25 Relationship between FmHA and FEMA.

(a) *General.* When a major disaster or emergency declaration is made by the President, the FEMA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FEMA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal Coordinating Officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) When a request for a major disaster or emergency declaration is made by the Governor of a State, the FEMA through its Regional Director is responsible for obtaining an assessment of the losses and damages to respond to the request.

(2) If the FEMA makes a request for information from FmHA on losses and damages caused by an unusual and adverse weather condition or natural phenomenon, the FEMA representative will be advised to contact the SFAC Vice Chairperson. The EOH provides that the SFAC will request the LFAC to prepare the DAR. State Directors and County Supervisors should cooperate with the SFAC Vice Chairpersons and LFAC Chairpersons in preparing the DARs.

(c) *After the declaration.* When a major disaster has been declared by the President and the FEMA establishes a disaster application center(s) in the local disaster area(s):

(1) The SFAC will be responsible for:

(i) Selecting qualified USDA employees to represent USDA at each center, after consulting with other council members in making the selection. FmHA State Directors will cooperate with the SFAC in seeing that centers are properly staffed.

(ii) Orienting the selected employees on all current USDA disaster programs. FmHA State Directors will cooperate in this orientation to ensure that the USDA representatives at the center(s) are familiarized with the FmHA EM loan program and other FmHA loan programs that could be of assistance to the disaster victims; and

(iii) Informing the FEMA that USDA representatives are available to help at each of the disaster application centers.

(2) The FmHA State Director will be responsible for pursuing the following policy in working with the FEMA and the FCO by:

(i) Authorizing receipt of EM loan applications in the counties named by the FEMA. However, no EM loans can be approved until the National Office has given such notification as prescribed in § 1945.20(a)(1) of this subpart;

(ii) Attending or delegating a representative to attend any meeting(s) called by the FCO to discuss Federal assistance under the disaster declaration; and

(iii) Advising the FCO to contact the SFAC Vice Chairperson, if a request is made by the FCO for FmHA employees to help staff the FEMA's Disaster Application Centers; and

(iv) Advising the FCO that FmHA's "Report of Emergency Loans Made Pertaining to Disasters" will be provided quarterly to FEMA's National Office by the FmHA National Office.

§ 1945.26 Relationship between FmHA and SBA.

(a) *General.* Public Law 99-272 made agricultural enterprises ineligible for SBA physical disaster and economic injury loan programs. However, in disaster areas declared by the President or the SBA Administrator, the SBA will continue to accept physical disaster loan applications for losses to dwellings and/or personal household contents, regardless of whether the dwelling is located on a farm or nonfarm tract. It is the policy of USDA and FmHA to cooperate with SBA in the use of each agency's respective loan making authorities, to complement the activities of each other; and to the extent possible, improve the delivery of disaster assistance to the agricultural segment of the country and minimize the potential for duplication of benefits for the same losses from the disaster loan programs administered by the two agencies.

(b) *Preventing duplication of disaster program benefits.* Preventing borrowers from receiving duplicate disaster program benefits will be assured by taking the following precautions:

(1) For all counties named by FEMA under a major disaster or Presidential emergency declaration, the FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each week, for damage or loss of farm dwellings and/or loss of household contents. Notice will be given by forwarding to SBA a photocopy of the applicant's completed Form FmHA 410-1, "Application for FmHA Services." Block 22 of the form should indicate the purpose for which the loan was requested.

(2) For each application referred to in paragraph (b)(1) of this section, FmHA County Offices will send a copy of each final action taken with EM loan applications to the appropriate SBA Disaster Area Office.

(3) A farm applicant may elect to obtain SBA financing for physical damage or loss to the dwelling and household contents, and separate financing from FmHA to cover damages or losses to the farming operation. Accordingly, applicants who elect to receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance in disaster areas declared by the President or the Secretary of Agriculture or FmHA Administrator. An EM loan will *not* be approved until it is determined the requirements of § 1945.163(d) of Subpart D of this part will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office, pursuant to para-

graph (a)(4)(ii) of § 1945.183 of Subpart D of this part.

(c) *How SBA disaster loans are made available.* SBA disaster loans are available in counties:

(1) Named by the FEMA under a major disaster or emergency declaration by the President; for physical loss and/or economic injury disaster loans.

(2) Declared by the SBA Administrator for physical loss and economic injury disaster loans.

(3) Designated by the Secretary of Agriculture for Agri-dependent businesses.

(d) *Notification of SBA disaster areas.* The SBA Central (National) Office will notify the FmHA National Office when its disaster loan program is made available. The FmHA National Office will notify State Directors, by memorandum, of the SBA disaster areas; and State Directors will notify the appropriate County Supervisor(s) in writing.

§ 1945.27 Relationship between FCIC and FmHA.

(a) *General.* Exhibit A of FmHA Instruction 2000-N (available in any FmHA office) is a Memorandum of Understanding between FCIC and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the FCIC and the FmHA by providing encouragement to regular and FmHA EM loan borrowers to use Federal All-Risk Crop Insurance, where available; assist FmHA borrowers to obtain All-Risk Crop Insurance or other agricultural commodity insurance coverage; and exchange information essential to the elimination of duplicating compensatory disaster benefits from the FCIC and FmHA for the same disaster losses.

(b) *Annual meeting with FCIC.* FmHA State Directors will meet with FCIC Field Operations Office Directors at least once each year to review the Memorandum of Understanding and rededicate their efforts and those of their respective agency employees to comply with the agreements contained in the Memorandum of Understanding.

(c) *Contact after EM actual loss loans are made available.* After each disaster, when EM loans are made available, State Directors are required to promptly contact the FCIC Field Operations Office Director to review the Memorandum of Understanding and agree on how each agency will fulfill its responsibilities in dealing with the disaster situation.

(d) *Notification to County Offices.* State Directors *will* provide instructions for actions to be taken by County Supervisors in maintaining a good relationship with FCIC Insurance Representatives.

§ 1945.28 Relationship between ASCS and FmHA.

Exhibit A of FmHA Instruction 2000-JJ (a copy of which is available in any FmHA office) is a Memorandum of Understanding between ASCS and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the ASCS and the FmHA by coordinating certain ASCS disaster programs with the FmHA EM loan program. It specifically identifies the administrative responsibilities of FmHA County Supervisors and ASCS County Executive Directors concerning disaster benefits.

§ 1945.29 [Reserved]

§ 1945.30 FmHA Emergency Loan Support Teams (ELST).

(a) *Use of ELSTs.* ELSTs are to be used when a disaster warrants immediate attention by FmHA in implementing the EM loan program. Also, ELSTs are used when unusually large numbers of EM loan applications are received and personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area(s).

(b) *State Office ELST.* Each State Director shall form an ELST to be deployed, when needed, in areas affected by a major disaster, Presidential emergency, or a natural disaster. ELSTs shall assist the State Directors in expediting the making of EM loans to disaster victims.

(1) State Directors shall use the ELSTs formed in their State(s) and all other FmHA personnel within their State(s), as the need arises, in making

EM loans. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request outside assistance.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State Director.

(i) The State ELST can include Farmer Programs Specialists, County and Assistant County Supervisors, Program Review Assistants, County Office Assistants, and County Office Clerks.

(ii) So that no one person or County Office unit bears an unfair burden, State team members will be changed from time to time.

(iii) Team members will provide training in EM loan making and EM loan servicing to all County Office employees.

(iv) District Directors are responsible for notifying the State Director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The National Office will hold training meetings or workshops for ELST leaders as needed; and

(ii) State ELST leaders will be responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) State Directors will issue a State supplement establishing an ELST for the State(s) under their jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Director, Emergency Designation Staff.

(c) *National Office ELST leaders.* The National Office has established a cadre of ELST team leaders.

(1) National Office team leaders will be used as follows:

(i) Training of FmHA field personnel, other USDA personnel, and temporary personnel in the making of EM loans:

(ii) Assisting State Directors in the organization and expediting of assistance to eligible disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of EM loan processing activities.

§ 1945.31 EmHA Emergency Loan Assessment Teams (ELAT).

The State Director will deploy ELATs on a continuing basis to the designated areas to monitor EM loan processing activities in order to minimize loan errors, especially in loss calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Office. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure and will forward a copy of the ELAT team leader's report to the Administrator, Attention: Emergency Designation Staff.

§§ 1945.32—1945.34 [Reserved]

§ 1945.35 Special EM loan training.

(a) *General.* When it is evident that a large number of farmers were affected by a widespread disaster in a State, the National Office will send a qualified representative(s) from the Emergency Designation Staff to the State to assist the State Director in conducting a training meeting(s) with State, District and County employees, provided there has not been a recent training meeting in that State.

(b) *Purpose.* A good training program is a must in disaster areas. This program should adequately instruct State and County Office personnel so that when the training is completed they will be well qualified to process EM loans without undue delay. The training meeting will last two days (16 hours) and include a workshop and a test.

(c) *Objective.* The basic objective of this training program is to keep State and County personnel properly trained in the current methods of processing EM loan applications and EM loan making. This will result in more expeditious service to disaster victims during critical times and minimize erroneous interpretations of regulations by FmHA employees in administering the EM loan program.

(d) *Comprehensive EM loan training package.* A comprehensive EM loan training package has been developed for use by National Office and Staff Office personnel in training all EM loan writers (both regular and temporary employees). This package, including an application kit, will be used for the EM loan training meetings, and any subsequent EM loan training meetings conducted by State or District personnel.

(e) *Funding.* Travel for the two-day session required in paragraph (b) of this section may be funded from a special purpose account with advance approval from the Budget Division. The following information must be provided to the Budget Division when a request is made for these additional travel funds:

(1) Number of sessions.

(2) Categories, by number, of personnel attending each session.

(3) Estimated cost per session.

§§ 1945.36—1945.44 [Reserved]

§ 1945.45 Public information function.

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also, the information will state the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed according to Exhibit A of FmHA Instruction 2015-A (available in any FmHA office).

§§ 1945.46—1945.50 [Reserved]

Subpart B—[Reserved]

Subpart C—Economic Emergency Loans

SOURCE: 44 FR 75105, Dec. 19, 1979, unless otherwise noted.

§ 1945.101 Introduction.

(a) *Policy.* This subpart contains regulations for making and servicing Economic Emergency (EE) loans made after August 11, 1978, and applies to borrowers, Farmers Home Administration (FmHA) personnel, and other parties involved in making, servicing, or liquidating such loans. It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract.

(b) *Program administration.* The County Supervisor is the local contact person for processing and servicing activities.

§ 1945.102 Program objectives.

The insured EE loan program objective is to make financial assistance available during the period authorized by Title II of Pub. L. 95-334, as amended, and as directed by the Final Order and Judgment in *Kjeldahl* v. *Block*, Civil No. 82-2745 (D. D.C., October 5, 1983), (the authority to make loans under this subpart begins December 22, 1983, and expires September 30, 1984), in the form of loans insured or guaranteed by FmHA, provided they are bona fide farmers and ranchers who are primarily and directly engaged in agricultural production. This allows these farmers and ranchers to continue their operations during the economic emergency which has been caused by a lack of agricultural credit due to economic stress such as a general tightening of agricultural credit *or* an unfavorable relationship between production costs and prices received for agricultural commodities. Supervisory assistance will be given according to the provisions of Subpart B of Part 1924 of this chapter. *It is the policy of FmHA to make insured EE loans only when guaranteed EE loans are not available through private and cooperative agricultural lenders.*

[48 FR 55105, Dec. 9, 1983]

§ 1945.103 [Reserved]

§ 1945.104 Definitions and abbreviations.

(a) *Definitions.*

(1) *Act.* Emergency Agricultural Credit Adjustment Act of 1978 (Title II of Pub. L. 95-334, as amended by Pub. L. 96-220 and Pub. L. 97-98).

(2) *Applicant.* The person or entity carrying on the farming operation and desiring EE loan assistance from FmHA.

(3) *Approval official.* A FmHA field offical who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA Office (see Subpart A of Part 1901 of this chapter, Exhibit C).

(4) *Aquaculture.* The husbandry of aquatic organisms by an applicant or borrower under a controlled or selected environment. Aquaculture operations are considered to be farming operations. Aquatic organisms may consist of any species of finfish, mollusk, crustacean (or other invertebrate), amphibian, reptile, or aquatic plant. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the applicant and the permit must specifically identify the waters available to be used by the applicant only.

(5) *Borrower.* All parties liable for the loan or any part thereof.

(6) *Consolidate.* To combine and reschedule the rates and terms of two or more EE loans made for operating purposes. This also may include a new EE loan made for operating purposes.

(7) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) where the entity will operate a farm(s).

(8) *Corporation.* A private domestic corporation recognized as a corporation by the laws of the State(s) where the corporation will operate a farm(s).

(9) *Deferment.* To postpone the payment of interest in part and/or principal in whole or in part.

(10) *Economic emergency.* A condition resulting from: (i) A general tightening of agricultural credit, or (ii) an unfavorable relationship between production costs and prices received for agricultural commodities, which has resulted in widespread need among farmers for temporary credit.

(11) *Family farm.* A farm which: (i) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(ii) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(A) Pay necessary family and operating expenses.

(B) Maintain essential chattel and real property.

(C) Pay debts.

(iii) Is managed by:

(A) The borrower when a loan is made to an individual.

(B) The member(s), stockholder(s) or partner(s) responsible for operating the farm when a loan is made to a cooperative, corporation or partnership.

(iv) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(A) The borrower and any family of the borrower for a loan made to an individual.

(B) The member(s), stockholder(s) or partner(s) who are responsible for operating a farm and the families of the member(s), stockholder(s) or partner(s), for a loan made to a cooperative, corporation or partnership.

(v) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

(12) *Farm.* A tract or tracts of land, improvement, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(4) of this section. It will also include a residence which, although physically separate from the farm acreage, is ordinarily considered as part of the farm in the local community.

(13) *Farmer.* An individual, cooperative, corporation or partnership that is a farmer, rancher, or aquaculture operator.

(14) *Farmers Home Administration.* The United States of America, acting through the Farmers Home Administration, an agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA office or official should be read as prefaced by "FmHA."

(15) *Farming or farm enterprises.* The business of producing crops, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials including seed, feed, fertilizer, and fuel. Farming and farm enterprises consist of a total farming or aquaculture operation, or a portion thereof, which produces different types of products, including crops, livestock, livestock products, and aquatic organisms.

(16) *Hazard insurance.* Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, vehicles, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

(17) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation or partnership.

(18) *Market value.* The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

(19) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(20) *Partnership.* An entity consisting of members who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(21) *Principal member, stockholder or partner.* Any member, stockholder or partner owning or controlling a 10 percent interest in a cooperative, corporation or partnership. If no member, stockholder or partner owns or controls at least a 10 percent interest, all members, stockholders or partners will be considered principal members, principal stockholders, or principal partners.

(22) *Reamortize.* To rearrange the installments of an EE loan made for real estate purposes within the remaining years of the original repayment period, or, when the repayment period has been extended to the maximum statutory repayment limit, within those years.

(23) *Reschedule.* To rewrite the rates and/or terms of EE loans made for operating purposes.

(24) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral shall be considered a reference to the term "security."

(i) *Basic security.* All real estate and fixtures and personal property such as foundation herds, flocks, aquatic animal and plant organisms, machinery, and equipment serving as security and crops when crops are the only security.

(ii) *Normal income security.* All security planned to be marketed in the regular course of business unless liquidation is approved. If liquidation is approved, such security becomes basic security.

(iii) *Additional security.* All security not covered by paragraph (a)(24) (i) or (ii) of this section.

(25) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) *Abbreviations.* The following abbreviations are applicable:

(1) *EL*—Emergency Livestock Loans

(2) *EM*—Emergency Loans

(3) *FMI*—Forms Manual Insert

(4) *FO*—Farm Ownership Loans

(5) *OGC*—Office of the General Counsel

(6) *OL*—Operating Loans

(7) *RH*—Rural Housing Loans

(8) *RL*—Recreation Loans

(9) *SW*—Soil and Water Loans

(10) *USDA*—United States Department of Agriculture.

[44 FR 75105, Dec. 19, 1979, as amended at 45 FR 35783, May 27, 1980; 48 FR 55105, Dec. 9, 1983]

§ 1945.105 Credit elsewhere.

(a) *Test for credit for individuals and entities.* The applicant must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, that source of credit must also be considered. The applicant's equity in *all assets,* including but not limited to real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, and partnerships and the principal members, principal stockholders, and principal partners, both individually and collectively, must be unable to obtain the required funds with their own resources or with credit obtained from other sources. Form FmHA 1940-38, "Request for Lender's Verification of Loan Application," when appropriate, must be filed in the County Office case folders and any additional facts concerning the findings in all cases must be documented and recorded in the running record.

(b) *Test for credit certification requirements.* The applicant shall certify in writing on the application form and the County Supervisor *shall* determine that adequate credit elsewhere is not available to finance the applicant's actual needs.

(1) If the EE loan(s) requested is less than $300,000, the following actions will be taken:

(i) When it appears from a review of the application that it would be unduly burdensome to require the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor knows the other lenders' programs well enough to determine that no possibility exists for the applicant to obtain the credit needed from these lenders. This conclusion and the basis for it will be recorded in the running record and further checks will not be necessary. However, the applicant's normal lender(s) *must be contacted in all cases* and the findings will be recorded in the running record.

(ii) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted. Form FmHA 1940-38 must be completed by all lenders contacted and returned to the county office. In lieu of using Form FmHA 1940-38, the lenders may submit a letter stating whether they will extend the credit needed by the applicant. If one or more of the lending sources contacted will provide the applicant with sufficient credit to finance actual needs at reasonable rates and terms taking into consideration prevailing private and cooperative rates and terms in the community, the applicant will be advised that it is not eligible for an EE loan. If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them have indicated they would provide credit with an FmHA guarantee, the applicant will be advised to file an application with that lender(s) so that a guaranteed EE loan request can be processed by the lender for consideration by FmHA. If the County Supervisor believes it necessary, the action required in paragraph (b)(2) of this section can be taken.

(iii) When the County Supervisor receives letters or other written evidence including Form FmHA 1940-38 from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket. Such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(2) If the EE loan(s) request is $300,000 or more, the following actions will be taken:

(i) The applicant will be required to apply at not less than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. However, when an applicant has a net worth of $1 million or more but cannot obtain credit in the local community, the applicant will be required to contact at least two other lending sources out of the local area. One or more of the lenders contacted must be the applicant's normal lender(s) even though the lender is not located in the local community.

(ii) Form FmHA 1940-38 must be completed by all lending sources contacted and returned to the County Office. If one or more of the lending sources contacted will provide the applicant with sufficient credit to finance actual needs at reasonable rates and terms taking into consideration prevailing private and cooperative rates and terms in the community, the applicant will be advised that it is not eligible for an EE loan. If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them have indicated they would provide the credit with an FmHA guarantee, the applicant will be advised to file an application with that lender(s) so that a guaranteed EE loan request can be processed by the lender for consideration by FmHA. Only if the applicant is not able to obtain a loan—either with or without an FmHA guarantee—from one or more of the lending sources contacted, will the applicant be considered for an insured EE loan.

(iii) When the County Supervisor receives Forms FmHA 1940-38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(c) *Use of nonfarm assets.* The basic objective of EE loans is, through financial assistance, to enable eligible *farmers* to maintain a viable *farming operation* after they have sustained substantial economic losses. Therefore, since the goal of EE loans is maintaining a sound *farm* economy, applicants with large holdings in nonfarm assets not essential to the successful operation of their *farm* will offer those assets as security for loans requested from other lenders.

(1) If other lenders will not provide the needed credit even with these assets offered as security for the loans, an EE loan may be considered provided it is determined that:

(i) The applicant by selling all or a part of the *nonfarm* assets could not meet the total financial needs of the farm *without other credit;* or

(ii) The applicant by selling all or a part of the *nonfarm* assets could not meet the total financial needs of the farm *with credit from other sources.*

(2) When an EE loan will be made, after other lenders have declined to provide credit, the County Supervisor may still require the applicant to sell

all or a part of such assets to meet a portion of the applicant's needs in connection with processing an EE loan for the difference between the applicant's actual needs and the amount realized by the sale of the assets. If the applicant cannot sell the assets before the loan is closed, the applicant will mortgage such assets to FmHA and agree in writing, in a manner approved by OGC, to sell them within a one year period and apply the proceeds to reduce the EE debt.

[45 FR 35783, May 27, 1980]

§§ 1945.106—1945.110 [Reserved]

§ 1945.111 Receiving and processing applications.

Applications will be received and processed in accordance with Subpart A of Part 1910 of this chapter. Form FmHA 410-1, "Application for FmHA Services," will be used for this purpose. The application may be processed for other loans when appropriate. An applicant conducting farming operations as an individual, or as a cooperative, corporation, or partnership in different counties or locations will be considered for only one application and will file the application in the county in which the farming operation is conducted unless determined otherwise by the State Director. In cases where the operation is located in more than one State, the State Directors involved will determine which State will process the application and service the loan(s).

(a) *Information required from entities.* If the applicant is a cooperative, corporation, or partnership the following information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, or partners showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation by each or the percentage of interest held in the partnership by each.

(2) A current personal financial statement (not over 60 days old at the time of filing the application) from each of the principal members of a cooperative, principal partners of a partnership, or principal stockholders of a corporation. Any other member, partner or stockholder whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the cooperative, corporation or partnership will also be required to provide a personal financial statement.

(3) A current financial statement (not over 90 days old at the time of filing the application) from the cooperative, corporation, or partnership itself.

(4) A copy of the cooperative's or corporation's charter, or the partnership agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative or corporation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(5) A copy of any written lease, contract, or agreement entered into by the applicant which may be pertinent to a consideration of its application. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(b) *Federal Land Bank Association stock.* Federal Land Bank (FLB) Association stock is required to be purchased by FLB Association borrowers and has value. It must be assigned to FmHA when it is relied upon as security for the loan. The loan approval official will record the determination of the market value of the security in such a case in the comments section of Form FmHA 422-1, "Appraisal Report—Farm Tract."

§ 1945.112 Eligibility.

To be eligible for an EE loan, an applicant must:

(a) *Citizen.* If an individual, be a *citizen of the United States* (see § 1945.104(a)(25) of this subpart for the definition of "United States"). If a cooperative, corporation, or partnership, those members, stockholders, or partners who have a majority interest in the entity applying for the loan must be citizens.

(b) *Bona fide farmer.* Be a *bona fide* farmer (owner-operator or tenant-operator), doing business in the United States either as an individual, cooperative, corporation, or partnership, that is recognized in the community as one primarily and directly engaged in agricultural production. *In the case of an individual loan applicant,* the term "primarily and directly engaged in agricultural production" means that the applicant(s) derives more than 50 percent of the gross income from the applicant's own agricultural production *or* either the applicant or family members of the applicant devote more than 50 percent of their time to such agricultural production. *In the case of a cooperative, corporation, or partnership loan applicant,* the term "primarily and directly engaged in agricultural production" means that the cooperative, corporation, or partnership derives more than 50 percent of its gross income from agricultural production *and* the member(s), shareholder(s), or partner(s) owning or controlling a majority interest in such cooperative, corporation or partnership either derive more than 50 percent of their gross income from their own or the cooperative's, corporation's, or partnership's agricultural production, *or* devote more than 50 percent of their time to such agricultural production.

(1) A bona fide farmer must be actually engaged in farming operations to be financed by an EE loan, and must have been engaged in farming during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application. If the applicant is an individual, the applicant must manage such farming operation. If the applicant is a cooperative, corporation, or partnership, it must be managed by one or more of the members, stockholders, or partners. One who does not devote full time to the farming enterprise may be considered the manager provided the person visits the farm at sufficiently frequent intervals to exercise control over the farming enterprise, gives directions as to how it should be run, and sees that the enterprise is being carried on properly. Any enterprise that involves an outside full-time manager or management service does not qualify regardless of the number of visits made. In addition, as between two applications on file at the same time, FmHA will give preference to an applicant who owns and operates not larger than a family farm as defined in § 1945.104(a)(11). However, for purposes of an EE loan, this does not exclude an applicant who does not own or operate a family farm.

(2) An estate or trust; a corporation owned primarily (more than 50%) by an estate, trust, other corporations, or other partnerships; an individual partnership composed primarily (more than 50%) of an estate, trust, corporation or other partnership is *not* considered to be a bona fide farmer for EE loan purposes.

(3) An individual engaged in a joint farming operation and/or owning an undivided interest in the property of such an operation is not considered to be an eligible farmer for EE loan purposes. However, if the individuals engaged in the joint farming operation decide on their own to reorganize their operation to form a cooperative, corporation or partnership, an application from the entity for an EE loan may then be accepted and considered by FmHA in accordance with this subpart.

(4) For the purpose of determining EE loan eligibility, farmers, ranchers, or aquaculture operators who operate through contract or business arrangements with an integrated processor(s) are considered "bona fide" farm, ranch, or aquaculture operators provided they meet established eligibility criteria and the unit being operated is recognized in the community as a farm, ranch, or aquaculture operation.

(5) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers, ranchers, and aquaculture operators are not considered to be bona fide farmers, ranchers, or aquaculture operators and, therefore, are not eligible for EE loans.

(c) *Change in the form of an applicant.* A change in the form of an applicant from an individual, partnership, cooperative, or corporation to another form of legal entity will not disqualify the new entity if it is conducting the same operation as was conducted during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application, and is primarily owned by substantially the same people that owned the operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application.

(1) When one or more *individuals* who were engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application later forms a partnership, cooperative, or corporation, the operation's application may still receive consideration provided such individual(s) owns at least 50 percent of the new partnership assets or cooperative or corporation's voting stock and continues to manage or control the farming operation.

(2) When a *partnership* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application later dissolves and the operation is continued by an individual or a newly formed partnership, cooperative, or corporation, an application from the individual or the new entity will receive consideration provided one or more of the partners who managed the farming operation for the prior partnership will now manage the operation for the applicant, and provided:

(i) The assets of the prior partnership are now owned by an individual applicant who, as a partner in the prior partnership, had owned at least 50 percent of the partnership assets; or

(ii) The assets of the prior partnership are now owned by a new partnership applicant and the partners who had owned at least 50 percent of the assets of the prior partnership are now partners owning at least 50 percent of the assets of the new partnership applicant; or

(iii) The assets of the prior partnership are now owned by a new cooperative or corporation applicant, and the partners of the prior partnership who owned at least 50 percent of those assets now own at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(3) When a *cooperative* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or a newly formed cooperative, corporation, or partnership, the application from the individual or new entity will receive consideration provided one or more of the members who managed the farming operation for the prior cooperative must now manage the operation for the new applicant, and provided:

(i) The assets of the dissolved cooperative are now owned by an individual who had owned at least 50 percent of the voting stock of the former cooperative, or

(ii) The assets of the former cooperative are now owned by a new partnership applicant and the members who had owned at least 50 percent of that cooperative are now partners owning at least 50 percent of the assets of the new partnership applicant, or

(iii) The assets of the former cooperative are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former cooperative are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(4) When a *corporation* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or newly formed cooperative, corporation, or partnership, the application from the individual or new entity will receive consideration pro-

vided one or more of the stockholders who managed the farming operation for the prior corporation must now manage the operation for the new applicant, and provided:

(i) The assets of the dissolved corporation are now owned by an individual who had owned at least 50 percent of the voting stock of the former corporation, or

(ii) The assets of the former corporation are now owned by a new partnership applicant and the stockholders who had owned at least 50 percent of that corporation are now partners owning at least 50 percent of the assets of the new partnership applicant, or

(iii) The assets of the former corporation are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former corporation are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(d) *Legal capacity.* Possess the *legal capacity* to incur the obligations of the loan.

(e) *Character, industry, training, or experience and ability.* Possess the character (emphasizing repayment ability and reliability), industry, training and/or experience and ability necessary to carry out the proposed operations and honestly endeavor to carry out the undertakings and obligations in connection with the loan.

(f) *Credit elsewhere.* Be unable to obtain credit elsewhere as outlined in § 1945.105 of this subpart.

(g) *Need.* Need such credit in order to maintain a viable agricultural production enterprise.

(h) *Registration or authorization.* If a cooperative, corporation, or partnership, be authorized to carry on a farming, ranching, or aquaculture operation in the State(s) in which the farm is located.

[44 FR 75105, Dec. 19, 1979, as amended at 45 FR 35784, May 27, 1980]

§ 1945.113 County Committee review.

The County Committee will review the initial application and any subsequent applications to determine whether the applicant meets EE loan eligibility requirements contained in § 1945.112 of this subpart.

(a) *Favorable action.* If the County Committee finds the applicant eligible, under § 1945.112 of this subpart, the members will sign Form FmHA 440-2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. A new Form FmHA 440-2 will be prepared for any loans(s) resulting from a subsequent application.

(b) *Unfavorable action.* If the County Committee finds that the applicant does not meet all of the requirements set forth in § 1945.12 of this subpart, the members will complete Form FmHA 440-2 and the County Supervisor will inform the applicant in writing of the reasons for the Committee's unfavorable action as set forth in Subpart A of Part 1910 of this chapter.

§ 1945.114 Planning, development, and appraisals.

See Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for the appropriate procedures dealing with appraisals. (See § 1945.120(b)(5) of this subpart for use of abbreviated appraisals.) See Subpart A of Part 1924 of this chapter for the appropriate procedures dealing with planning and development.

[48 FR 55105, Dec. 9, 1983]

§ 1945.115 [Reserved]

§ 1945.116 Loan purposes.

EE loans may be made for purposes which are essential to carrying on farming operations. These purposes are:

(a) *Operating purposes.* (1) Purchase of essential livestock, poultry, fur bearing and other farm animals, aquatic organisms, bees, farm equipment, and paying costs incident to reorganizing the farming system for a viable operation.

(2) Payment of secured or unsecured *annual* family living and farm production debts (*not* including FmHA insured and guranteed loans) when it is determined that the lender(s) is demanding payment in full and will not

continue with the applicant or carry a portion of the applicant's debt(s).

(i) Preference will be given to paying those debts that will be most helpful to the applicant in carrying on essential farm and home operations.

(ii) Ordinarily, in the case of old unsecured debts or inadequately secured debts, the applicant will be requested to contact the applicant's creditor(s) and attempt to obtain a substantial reduction of such debts before the payment of such debts with EE loan funds.

(iii) When *annual* credit advances were made for family living and/or farm production expenses, but also included funds for capital expenditures such as equipment, foundation livestock, and real estate purchases or improvements, *only* that portion advanced for *annual* family living and farm production expenses may be *fully* paid with EE loan funds. However, one year's interest and an amount not to exceed 20 percent of the appraised market value for the essential farm and home equipment and livestock under prior lien to the creditor(s), or 20 percent of the balance owed to the creditor(s) (whichever is the lesser) may be paid with EE loan funds.

(3) Payment of existing delinquent installment(s) plus the next installment owed on farm and home operating debts which were amortized over a period of more than one year (*not* including FmHA insured and guaranteed loans) when it is determined that the lender(s) is demanding payment of the delinquent installment(s) and will not continue with the applicant without receiving payment of such installment(s). When a nondelinquent installment is involved, payment of a nondelinquent installment may be made *only* if the applicant has insufficient cash flow to meet the existing payment terms and the indebtedness will *not* be paid in full with such payment. When the "nondelinquent" installment is a balloon payment, such installment will *not* be paid in full. In such cases, only an amount equal to a regular installment will be paid and the lender will be required to extend the remaining portion of the balloon payment for a reasonable period of time.

(4) Purchase of a milk base either with or without cows when such action is necessary to assure the borrower a satisfactory market for the dairy products.

(5) Purchase of grazing license or permit rights of private parties which can be validly sold and transferred.

(6) Augmenting and improving existing water supplies.

(7) Payment of fuel, seed, fertilizer, insecticide, farm supplies, labor, and other annual operating expenses that are essential to continuation of the farming operations, including the operation of any additional acreage which does not substantially expand the farming operation(s).

(8) Payment of customary cash rent or cash charges for the use of essential buildings, pasture, crops, hay, land, and grazing permits or bills for such purposes for the operating or crop year being financed, subject to the following:

(i) The applicant is obligated under a written lease or other agreement to pay such rent or charges in advance of the time income will be available from the operations to make such payment. For grazing fees an invoice showing the number of livestock to be grazed, the grazing period, the cost per head and the total cost may be used in lieu of a written lease. However, when a relatively small amount of funds are involved, an invoice will not be required if the applicant's explanation of a satisfactory grazing agreement is recorded in the loan docket.

(ii) Arrangements cannot be made for the rent or charges to become due when income will be available from the operation to make such payment.

(iii) The terms of the rental agreement provide the applicant with satisfactory tenure for the crop year being financed.

(iv) Not more than one year's cash rent or cash charges will be paid with loan funds in any one lease year, except that if a loan is approved near the end of the current lease year, funds for payment of such rent or charges for the succeeding lease year may be included in the loan.

(9) Payment of delinquent real and personal property taxes and other taxes such as income and social securi-

ty taxes due or about to become due, and water or drainage charges or assessments.

(10) Payment of reasonable expenses incidental to obtaining, planning, making and closing the loan such as fees for legal, architectural, and technical services which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay a reasonable fee(s) for recordkeeping and related farm management service(s), if necessary, to meet the objectives of the loan plus the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned building or land improvements. However, loan funds are *not* to be used to pay fees charged applicants by agricultural management consultants and other professionals for preparation of EE loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

(11) Payment of premiums for insurance on real and personal property including premiums for public liability and property damage insurance on farm and other essential equipment, including farm trucks. When a loan is secured by chattels and the loss of such chattels would jeopardize the interest of the Government, FmHA may require the borrower to insure the chattels against hazards customarily covered by insurance in the area.

(12) Meeting family subsistence needs, including premiums on reasonable amount of health and life insurance, and expenses for medical care or for paying bills incurred for any of these purposes during the crop year being financed.

(13) Purchase stock in a cooperative lending or marketing organization that is necessary to maintain a viable farming operation.

(14) Up to $25,000 in a fiscal year for real estate improvements or repairs. The following determinations must first be made:

(i) A loan will not be needed year after year for this purpose.

(ii) The applicant owns the land or has a lease including a compensating agreement adequate to reimburse the tenant for any unexhausted value of the improvement upon termination of the lease.

(iii) It is clearly necessary for the success of the operation.

(15) When it is a customary practice among farmers in the locality, payment of "hedging" costs including brokerage fees, margin requirements and margin calls in connection with a futures contract for nonspeculative purposes for a specific commodity being produced.

(b) *Real estate purposes.* (1) Changing or reorganizing the farming operation so it will be an economically viable operating unit. Such purpose includes the contruction, improvement, alteration, repair, relocation, purchase or moving of essential either service buildings, facilities, and structures on the applicant's real estate necessary for reorganization of the operation, including the purchase and/or installation or augmentation and improvement of essential farmstead water and sewage systems, and other equipment or facilities necessary to the operation (including alcohol fuel and methane gas facilities, and equipment which utilizes wind or solar energy).

(2) Providing land and water development, acquiring water supplies, rights, and use, and providing conservation essential to the operation. This includes but is not limited to fencing, land clearing, forestry practices, establishment and improvement of permanent hay or pasture, drainage and irrigation facilities, basic application of lime and fertilizer, and development of fish ponds and lakes.

(3) Payment of existing delinquent installment(s) plus the next installment owed on farm real estate or other farm and home debts (*not* including FmHA insured and guaranteed loans) when it is determined that the lender(s) is demanding payment of the delinquent installment(s) and will not continue with the applicant without receiving payment of such installment(s). When a nondelinquent installment is involved, the following conditions must be met:

(i) Payment of a nondelinquent installment may be made *only* if the applicant has insufficient cash flow to meet the existing payment terms and the indebtedness will *not* be paid in full with such payment. When the "non-delinquent" installment is a balloon payment, such installment will *not* be paid in full. In such cases, only an amount equal to a regular installment will be paid and the lender will be required to extend the remaining portion of the balloon payment for a reasonable period of time.

(ii) The limitation found in § 1945.117(a)(5) must be complied with.

(iii) Preference will be given to paying those installments that will be most helpful to the applicant in carrying on essential farm and home operations.

(iv) Ordinarily, in the case of old unsecured debts or inadequately secured debts, the applicant will be requested to contact the applicant's creditor(s) and attempt to obtain a substantial reduction of such debts before payment of installments.

(4) Payment of reasonable expenses incidental to obtaining, planning, making and closing the loan such as fees for legal, architectural, and technical services which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned building or land improvements. However, loan funds are not to be used to pay fees charged applicants by agricultural management consultants and other professionals for preparation of EE loan dockets including farm and home plans and other FmHA forms used in processing such loans.

(5) Payment of the first-year premium for required insurance on buildings on the property which are to serve as security for the loan. Buildings will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1), except when the appraisal report shows that the land alone will adequately secure the loan. However, the applicant will be encouraged to take property insurance on essential buildings to protect the applicant's interest. Borrowers eligible for insurance under the National Flood Insurance Act of 1968 will be advised of its availability in accordance with Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

[44 FR 75105, Dec. 19, 1979, as amended at 45 FR 35785, May 27, 1980; 46 FR 2590, Jan. 12, 1981]

§ 1945.117 Loan limitations and special provisions.

(a) *Limitations on use of loan funds.* (1) Loan funds *will not* be used to purchase land.

(2) Loan funds *will not* be used to lease additional land which would increase the number of acres of the operation above the highest level being farmed during the year of application or the year preceding application, whichever is greater.

(3) Individual members of a cooperative, partnership, or stockholders of a corporation, will not receive individual loans to finance their interest in the cooperative, corporation, or partnership farming operation.

(4) Loan funds will not be used to buy, build or repair a borrower's personal dwelling(s).

(5) Installments owed on farm or home real estate debts will not be paid unless such real estate was purchased by the applicant at least one year before the date of the EE loan application. When a farm real estate Purchase Contract(s) is involved, the following conditions must be met and documented in the case file by the County Supervisor or loan approval official:

(i) The farm real estate Purchase Contract(s) must have been in effect for at least 12 months before the date of the EE loan application.

(ii) The terms of the farm real estate Purchase Contract(s) must be reasonable and in keeping with terms normally provided by sellers in the area. EE loan funds will *not* be used to pay an installment(s) owed on such a Purchase Contract(s) which contains terms too tight for the applicant/borrower to meet under normal conditions.

(iii) Such contract(s) must meet the real estate security requirements prescribed in § 1945.120 (b)(7) of this subpart. In addition, it must be determined that such Purchase Contract(s) provides the applicant/borrower with comparable rights and benefits afforded by regular deeds and real estate security instruments.

(b) *Total loans to applicants.* The total principal balance outstanding at any time on an EE loan(s) shall not exceed $400,000.

(c) *Applicants involved in more than one operation.* Loans to applicants involved in more than one operation will be considered as follows:

(1) If an applicant who, in addition to the applicant's own farm operation, owns or controls *50 percent or more* of another farm operations(s), and the applicant is actively engaged in both operations, both the applicant and the other farm operation(s) may be considered for separate loans provided the combined total does not exceed the $400,000 limitation.

(2) If an applicant who, in addition to the applicant's own farm operation, owns or controls *less than 50 percent* of another farm operations(s), is actively engaged in *separate* farm operation(s), the applicant and the other farm operation(s) will be considered as separate entities for application of the $400,000 limitation.

(3) If the first applicant described in paragraphs (c) (1) and (2) of this section is deemed to be ineligible, such determination shall not preclude the other operation(s) in which the applicant holds an interest from being considered for an EE loan(s).

(d) *Relationship with other FmHA insured or guaranteed loans.* (1) If an applicant qualifies for an EM loan in an authorized area, the applicants credit needs will first be considered under EM loan authorities.

(2) Applicants applying for FmHA assistance or borrowers already indebted to FmHA and/or FmHA guaranteed lender(s) for FO, OL, RL, or SW, loan(s) may be considered for EE loan(s) provided the total outstanding principal indebtedness to FmHA and/or the lender(s) does not exceed $650,000. Applicants applying for assistance, who are eligible for FO, OL, RL, or SW loans will have their credit needs considered as follows:

(i) If at all possible their *total* credit needs should be met with an FO, OL, RL, or SW loan;

(ii) If their *total* credit needs cannot be met with an FO, OL, RL, or SW loan, they may be made an EE loan to meet their *total* needs;

(iii) If their *total* credit needs are greater than can be met with an EE loan, an EE loan can be made *simultaneously* with an FO, OL, RL, or SW loan to meet the applicant's needs; and

(iv) If FO, OL, RL, or SW loan funds are not available in hardship cases, an EE loan can be made to meet the applicant's immediate credit needs.

(3) The combined total of EM and EL indebtedness will *not* be considered in determining the $400,000 EE loan limitation.

(e) *Prohibition on guaranteeing repayment of advances from other credit sources.* FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

[44 FR 75105, Dec. 19, 1979, as amended at 46 FR 2590, Jan. 12, 1981; 48 FR 55105, Dec. 9, 1983]

§ 1945.118 Loan rates and terms.

(a) *Interest rates.* See Part 1810 of this chapter (FmHA Instruction 440.1, Exhibit B, a copy of which is available at any FmHA office), for the applicable interest rate.

(b) *Terms of loan repayment.* Loans will be scheduled for repayment at such time and periods as the FmHA approval official may determine, consistent with the purpose of and need for the loan, and in accordance with the useful life of the security and the reasonable repayment ability of the applicant as reflected in the completed Form FmHA 431-2, "Farm and Home Plan." However, there must be at least an annual installment unless a *deferment* of principal and/or interest is authorized in accordance with § 1945.119 (c) and (e) of this subpart.

(1) Loan terms for items financed under § 1945.116(a) (*Operating purposes*) of this subpart will be as follows:

(i) Loans will be for a period not to exceed 7 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. Such period may be approved as warranted but cannot exceed 20 years. Generally, real estate will be needed as security when the longer repayment period is authorized. This longer repayment period will only be used when the applicant would be unable to repay the loan in a shorter period taking into consideration rescheduling possibilities. The reasons the longer period is given must be documented in the county office case file.

(ii) When conditions warrant, installments may vary in amounts. However, the final installment will not be larger than the amount which can then be financed with other agricultural lenders or be repaid within a rescheduled period of not to exceed 7 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the loan term to determine if such rescheduling is warranted.

(iii) Advances for annual recurring operating expenses or for paying bills incurred for such purposes for the crop year being financed will be scheduled for payment when the principal income from the year's operations normally would be received. *However*, the initial loan for annual recurring operating purposes may be scheduled for repayment for a period up to 7 years, if additional security other than crops can be obtained.

(2) Loans for real estate and items financed under § 1945.116(b) (*real estate purposes*) will normally be scheduled for repayment in *not more than 30 years*. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. Such period may be approved as warranted but cannot exceed 40 years. The longer repayment period will only be used when the applicant would be unable to repay the loan in a shorter period. The reasons the longer period is given must be documented in the county office case file.

[44 FR 75105, Dec. 19, 1979, as amended at 45 FR 35786, May 27, 1980]

§ 1945.119 Consolidation, rescheduling, reamortization and deferral.

(a) *General requirements.* When the loan approval official determines that consolidation, rescheduling, reamortization, or deferral will assist in the orderly collection of the EE loan and any existing EE loans, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

(b) *Approval authority.* Loan approval officials are hereby authorized to consolidate, reschedule, reamortize, or defer loans subject to their approval authority in Subpart A of Part 1901 of this chapter.

[44 FR 75105, Dec. 19, 1979, as amended at 48 FR 55105, Dec. 9, 1983; 49 FR 16985, Apr. 23, 1984; 50 FR 11499, Mar. 22, 1985; 53 FR 35716, Sept. 14, 1988]

§ 1945.120 Collateral requirements.

(a) *Collateral.* (1) The County Supervisor is responsible for seeing that proper collateral is pledged, maintained, and is in existence and of record to protect the interest of the Government. The applicant, or any other individual or entity pledging real estate collateral for the loans must have a mortgageable interest or marketable title to the collateral pledged as security for the loan, and FmHA must ascertain that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Except for the modifications contained in paragraph (c) of this section, collateral must be of such a nature that repayment of the loan is reasonably assured considering the integrity and ability of the applicant's management, soundness of the operation, and the applicant's prospective earnings. Collateral may include, but is not limited to the following: Livestock, livestock products, crops, land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, personal and corporate guarantees, marketable securities, and cash

surrender value of life insurance. Collateral may also include assignments of leases of leasehold interest, revenues, patents, and copyrights. In unusual cases, the loan approval official may require a co-signer or a pledge of security. Generally, a pledge of security in lieu of a co-signer is preferable.

(3) A lien will not be taken on property that cannot be taken subject to a valid lien, nor will a lien be taken on subsistence livestock, household goods, and small tools and small equipment such as handtools, power lawnmowers and the items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock except when such livestock is being fed for market and the loan is otherwise well secured.

(4) When FmHA and a guaranteed lender are involved in separate EE loans to the same borrower, separate collateral must be clearly identified for both the FmHA and the lender's loans.

(b) *Additional requirements.* (1) If the present market value of the collateral is not at least equal to the amount of the loan, the applicant's repayment ability may be considered by the loan approval official in determining whether the loan should still be made. When the applicant's repayment ability is so considered, the following conditions must also be met:

(i) The applicant's typical year operating plans indicate ability to pay the loan in full within the proposed repayment period (which may provide for a deferral if necessary).

(ii) The applicant will give a lien on *all* available collateral.

(iii) Life insurance may be required for the individual borrower or for the principals and key employees of an entity borrower and will be assigned or pledged to FmHA. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(2) Operating loans for *annual* recurring expenses made under § 1945.116(a)(7) of this subpart will be secured by a first lien on the crop or livestock, or both, being financed with EE loan funds plus enough other collateral including personal property, real estate, and crop insurance, to assure that the Government's financial interest will be protected. When the applicant can provide no collateral other than a first lien on crop and/or livestock production, or both, the amount that may be loaned for actual recurring expenses will be limited to 75 percent of the planned gross farm income as shown on Form FmHA 431-2, or another acceptable plan of operation based on normal production and prices authorized by the State Director for developing annual farm plans within the State. When a borrower needs a supplemental EE loan for annual recurring expenses to complete the year's farming operation and the loan is made to protect the Government's financial interest, an exception to the 75 percent gross income requirement may be made by the State Director.

(3) Loans made under § 1945.116 (a) (*Operating purposes*) of this subpart will be secured by a lien on sufficient equity in livestock, crop, equipment and machinery, (including essential truck and automobiles) and, if necessary, other personal property to protect the Government's interest. A lien on part or all of the real estate owned by the applicant may be taken as additional security if the lien is needed to protect the interest of the Government. When the applicant can provide no collateral other than a first lien on crops and/or livestock production, or both, the policy outlined in paragraph (b)(2) of this section will apply. If the applicant has enough equity in real estate to secure the entire amount of the loan, no additional security need be taken. However, a second crop lien may be taken when deemed necessary to assure repayment of the loan.

(4) Loans under § 1945.116(b) (*Real estate purposes*) of this subpart will be secured by a lien on real estate. However, if the applicant does not have sufficient equity in the real estate, a lien also will be taken on personal property, plus, if necessary, a second lien on the crops. An EE loan made to a tenant with a long-term lease may be secured by a lien on a transferable leasehold.

(5) Loans may be approved with abbreviated appraisals (also see § 1945.114 of this subpart) of the property being taken as security for the loan provided:

(i) The loan approval official determines that the applicant's equity in the security will adequately secure the EE loan(s).

(ii) When abbreviated appraisals are prepared:

(A) For real estate, the following portions of Form FmHA 422-1 will be completed: The heading of the report; Item A of Part 1; Part 2; Part 3; Part 6; Part 7; and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(B) For chattel property, Form FmHA 440-21, "Appraisal of Chattel Property," will list and identify and show the value of each chattel item, and items A through E will be completed.

(6) When an EE loan is to be secured by a lien on real estate or a combination of real estate and chattels, the total security will be considered "basic security." However, notwithstanding the definition in § 1945.104(a)(24)(i) of this subpart, when chattels are primarily relied upon as security and real estate is taken only as additional security to better protect the Government's interest and when the amount of the loan does not exceed the value of the primary chattel security by more than $10,000, the additional real estate security will not be considered as basic security. For all loans *over $25,000* when real estate is taken as basic security, title clearance is required. For loans of $25,000 or less, and for loans for which real estate is taken as additional security, only a certification of ownership and verification of equity in real estate is required. Certificiation of ownership may be accepted in the form of a notarized affidavit from the applicant stating who is the owner of record of the real estate in question and acknowledging all known debts, with balances owed, against the real estate. Whenever the County Supervisor is uncertain of the ownership of or debts against the real estate security, and in all cases where loans are made to cooperatives, corporations or partnerships, title search will be required.

(7) If the real estate offered as security is held under a purchase contract, the following conditions will prevail:

(i) The applicant must be able to provide mortgageable interest in the real estate concerned.

(ii) The applicant and the purchase contract holder must agree in writing that all insurance claim settlements received for real estate losses will be used in their entirety to replace or repair any damaged real estate improvements which are essential to the farming operation, used for other essential real estate improvements or paid on the EE loan or any prior real estate indebtedness including the purchase contract. The applicant will renegotiate with the purchase contract holder to arrive at a new contract if there are any provisions objectionable to FmHA in the existing contract.

(iii) If a satisfactory contract of sale cannot be renegotiated or the purchase contract holder refuses to enter into the agreement described in paragraph (b)(7)(ii) of this section, the applicant will make every effort to refinance the existing purchase contract.

(iv) If the conditions provided for in paragraphs (b)(7) (i), (ii) and (iii) of this section can be met and an EE loan is approved, it can be closed provided the FmHA escrow agent or designated attorney determines that:

(*A*) The purchase contract is not subject to summary concellation on default and does not contain other provisions which might jeopardize the Government's security position or the borrower's ability to repay the loan.

(*B*) The contract holder must agree in writing to give the FmHA notice of any breach by the purchaser, and must further agree to give FmHA the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on the day FmHA receives written notice of the breach.

(8) If any of the prior liens against real estate offered as security contain future advance provisions, or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations under these prior liens and

to pay the EE loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government.

(9) When a junior lien on real estate is to be taken as security for the loan in States where a prior lienholder may foreclose the security instrument under power of sale or otherwise and extinguish junior liens or private parties without giving junior lienholders actual notice, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or assignment of the mortgage.

(10) If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. However, when the real estate appraisal report shows that the present market value of the land, after deducting the value of buildings shown on the report, exceeds the amount of the debt (including the EE loan) and the owner has equity equal to or exceeding the amount of the debt (including the EE loan), real property insurance will not be required. However, the applicant will be encouraged to obtain such insurance if the applicant does not already have it to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement is made the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EE loan.

(11) Loan amounts borrowed for repair or replacement of personal possessions and home equipment or furnishings will be secured by a lien(s) on crops, aquatic organisms, livestock, farm machinery, essential trucks or automobiles, and/or farm real estate.

(12) Crop insurance *is not* a loan requirement. However, loan approval officials should encourage borrowers to obtain and maintain Federal Crop Insurance Corporation (FCIC) sponsored crop insurance, if it is available, when it appears to be advantageous for the borrower. When crop insurance is obtained by the borrower, an "Assignment of Indemnity" will be executed by the borrower; provided no prior "Assignment of Indemnity" has been given to another lienholder for the crop(s) in question. Only one assignment on a crop for any one year will be accepted by FCIC. An "Assignment of Indemnity" need not be required when the crop insurance policy contains a standard mortgage clause naming FmHA as mortgagee or secured party.

(13) EE loans to Indians which are secured by trust or restricted land will be handled as follows: The United States Department of Agriculture (USDA) and the Department of the Interior have mutually agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restriction against alienation subject to statutes under which they may, with the approval of the Secretary of the Interior, give mortgages on their land which are valid and enforceable. These statutes include, but may not be limited to, the Act of March 29, 1956 (70 Stat. 62).

(i) When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant.

(ii) The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under such conditions.

(14) The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this chapter (chattels and crops) and with para-

graph (b)(7) of this section and §1945.129(b) (real estate) of this subpart.

(15) Insurance may be required on personal property when the loan approval official determines it is necessary to protect the interest of the Government.

(c) *Signatures of principal partners, shareholders, and members of partnerships, corporations, and cooperatives required to obtain full personal liability.* When the applicant is a cooperative, partnership or a corporation, the promissory note(s) will be executed so as to evidence liability of the entity as well as each principal member, partner of stockholder (as defined in §1945.104(a)(21) of this subpart) as an individual. To evidence the principal members', partners' or stockholders' liability as individuals, the words "As Individuals" will be typed at the top of the blank space to the left of the lines for signatures on the promissory note(s), and each principal member, partner of stockholder will sign under that heading.

(d) *Personal and corporate guarantees.* (1) If a review of all credit factors indicates the need for additional security, FmHA may require additional personal and corporate guarantees. FmHA also may require that such guarantees be secured. Any collateral referred to in paragraph (a)(2) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing), certified by an officer of the corporation.

[44 FR 75105, Dec. 19, 1979, as amended at 45 FR 35786, May 27, 1980; 48 FR 55105, Dec. 9, 1983]

§ 1945.121 [Reserved]

§ 1945.122 Revision of the use of loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The loan was within the respective official's loan approval authority.

(2) Such a change will not adversely affect the feasibility of the operation for the Government's interest.

(3) Such a change is consistent with authorities, policies, and limitations for the loan involved and is for an authorized purpose.

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to funds for the "debt repayment" will be made in Table K of Form FmHA 431-2 and they will be initialed by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905-1, "Management System Card-Individual," for followup.

[44 FR 75105, Dec. 19, 1979, as amended at 48 FR 55106, Dec. 9, 1983]

§ 1945.123 General provisions—compliance requirements.

(a) *Environmental impact and evaluation statements.* If EE loans are made in populated areas to finance an operation which has relatively large feedlots or holding facilities for livestock of aquatic organisms or smaller feedlots or holding facilities which are likely to have an effect on the environment, the applicant will be requested to complete Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

(1) The County Supervisor will complete Form FmHA 440-46, "Environmental Impact Assessment," from information provided by the applicant in Form FmHA 449-10.

(2) The County Supervisor will forward a copy of the loan application, completed Forms FmHA 449-10 and 440-46, and any other information and docket material relevant to environmental considerations to the State Director. The State Director will determine whether an environmental impact statement should be prepared based on this submittal and any other available information.

(3) The provisions of Subpart G of Part 1901 of this chapter will be followed to the extent applicable for EE loans in making decisions on farm operations that may have significant impact on the environment.

(b) *Equal opportunity and nondiscrimination requirements.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, FmHA will not discriminate against any applicant on the basis of race, color, religion, marital status, sex, national origin, physical/mental handicap with respect to any aspect of credit transactions. See Subpart E of Part 1901 of this chapter for applicable compliance requirements.

(c) *Flood or mudslide hazard area precautions.* (1) Projects located in special flood or mudslide hazard areas, as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development, may be financed under this subpart only:

(i) If the community, as a result of such designation by FIA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(ii) If the project location and construction plans and specifications for new buildings or improvements to existing buildings comply with the approved flood plain area management plan required by paragraph (c)(1)(i) of this section.

(2) If the project is located in a special flood or mudslide hazard area and if flood insurance is available, it will be purchased by the borrower prior to loan closing. (See Subpart B of Part 1806 of this chapter.) (FmHA Instruction 426.2.)

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(e) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with the Soil Conservation Service, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisitions of water rights.

(ii) Define areas where development of ground water for acquisition is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

§§ 1945.124—1945.125 [Reserved]

§ 1945.126 Cancellation of loan checks and advances.

(a) If a loan check is to be canceled, the County Supervisor should follow FmHA Instruction 102.1, paragraph IV C (a copy of which is available in any FmHA office).

(b) When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI).

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(3) Transmit to the Finance Office an original of Form FmHA 1940-10 and Form FmHA 440-57 reflecting the revised repayment schedule. The advance will be cancelled as prescribed in FmHA Instruction 102.1 (available in any FmHA office).

[47 FR 36415, Aug. 20, 1982, as amended at 53 FR 26591, July 14, 1988; 54 FR 39728, Sept. 28, 1989]

§ 1945.127 Increase or decrease in amount of loan.

If it becomes necessary that the amount of the loan be increased or decreased prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the State Office.

[46 FR 28331, May 26, 1981, as amended at 53 FR 26591, July 14, 1988]

§ 1945.128 Docket preparation.

(a) *Processing guide.* See Exhibit A of this subpart for Insured EE Loan Processing Guide.

(b) *Form FmHA 1940-1, "Request for Obligation of Funds."* A separate Form FmHA 1940-1 will be prepared for each amount of the total loan which has a different purpose (operating or real estate). When the County Supervisor is reasonably certain that the EE loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through field office terminal system. Loan funds may be scheduled for multiple advances, if appropriate. The amount of the initial advance will be requested through field office terminal system. Subsequent advances may be scheduled by using the field office terminal system. Each advance will be limited to an amount which can be used promptly, usually within sixty days from the date of the check.

(c) *Promissory note.* A separate Form FmHA 1940-17 will be prepared for each Form FmHA 1940-1 used in obligating the total amount of the EE loan. Each scheduled installment will include interest in addition to principal unless deferral of principal is authorized in accordance with § 1945.119 of this subpart.

[44 FR 75105, Dec. 19, 1979, as amended at 48 FR 55106, Dec. 9, 1983; 53 FR 26591, July 14, 1988; 54 FR 39728, Sept. 28, 1989; 54 FR 47959, Nov. 20, 1989]

§ 1945.129 Approval and closing.

(a) *Loan approval.* Loans will be approved in accordance with the authorities and provisions contained in this subpart and the loan approval conditions and authorities contained in Subpart A of Part 1901 of this chapter. See Subpart B of Part 1941 of this chapter for closing loans secured by chattels.

(1) When the County Committee certification has been made, the loan approval official will determine administratively whether:

(i) The applicant is eligible, likely to be successful in the proposed operations, and likely to achieve the objectives of the loan.

(ii) The applicant has satisfactory tenure arrangements on the farm to be operated.

(iii) The proposed farm and home operations of the applicant are reasonably sound.

(iv) The loan is proper and can be repaid from farm or other income as scheduled.

(v) The security requirements can be met.

(vi) The certification required of the applicant and County Committee have been made and are a part of the loan docket.

(vii) The loan meets all other FmHA requirements.

(b) *Loan closing.* Closing loans secured by real estate will be handled as follows:

(1) Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1).

(2) Security instruments referred to in this section are real estate mortgages or deeds of trust.

(i) *Security instrument forms.* (A) FmHA real estate mortgage or deed of trust Form FmHA 427-1 (State), "Real Estate Mortgage for ———," will be used in all cases.

(B) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except that if the form is legally inadequate in a particular State it may be adapted with the approval of OGC.

(C) When water stock certificates or similar collateral are a part of the security, they will be retained in the County Office. A notation will be made on Form FmHA 1905-1, "Management System Card-Individual," showing that such security has been retained.

(D) Form FmHA 1940-17 will be prepared and completed at the time of loan closing in accordance with the FMI. If insured RH funds are advanced simultaneously, the RH loan will be evidenced by a separate note on the proper form as provided in Subpart A of Part 1944. However, both notes will be described in the same security instruments. When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing unless a deferral is approved.

(E) When subsequent loans are made, a new security instrument will be required only when such existing instruments do not cover all required security or will not secure the subsequent loan.

(F) A subsequent loan for any authorized purpose may be made without taking new security instruments in any case in which the existing security instruments cover all of the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if one of these requirements is not met.

(ii) *Leaseholds.* Security instruments for loans secured by leaseholds will describe the security in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(A) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

> All Borrower's right, title, and interest in and to the leasehold estate for a term of —— years beginning on ———,19—, created and established by a certain lease dated ———, 19— executed by ———, as lessor(s), recorded on ———, 19—, in Book ———, page — of the ——— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(B) An additional covenant will be inserted in the mortgage to read as follows:

> Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(C) A copy of the lease will be obtained for the case file.

(iii) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(A) If the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. If the original is retained by the recording official, a conformed copy, including the recording date showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder or if it is required by a working agreement provision with that lender.

(B) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(iv) *Abstracts of Title.* Any abstract of title will be delivered to the borrower for safekeeping, and Form FmHA 140-4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(v) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), if this has not already been done. Agreements will be in writing and cover subjects such as disposition of growing crops, rentals, payment of maintenance cost, and other pertinent points.

(vi) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower.

(vii) *Supervised bank accounts.* If a supervised bank account is required, loan funds usually will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter.

[44 FR 75105, Dec. 19, 1979, as amended at 46 FR 61991, Dec. 21, 1981; 48 FR 55106, Dec. 9, 1983]

§§ 1945.130—1945.134 [Reserved]

§ 1945.135 Loan servicing.

Loans will be serviced in accordance with Parts 1806 and 1863 (FmHA Instructions 426.1, and 425.1, respectively) and Subpart A of Parts 1962 and 1965 of this chapter.

[51 FR 4137, Feb.3, 1986; 51 FR 9174, Mar. 18, 1986]

§ 1945.136 Graduation.

Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that their loans will be reviewed for graduation by FmHA. Applicants will also be advised during loan processing and again at loan closing that they will be required to refinance at any time if other satisfactory credit is available to them even though their loans have not fully matured. This will be in accordance with the graduation procedure set forth in Subpart F of Part 1951 of this chapter. EE loans will be reviewed three years after they are made and every other year thereafter.

[45 FR 35786, May 27, 1980, as amended at 48 FR 40203, Sept. 6, 1983]

§§ 1945.137—1945.144 [Reserved]

§ 1945.145 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0096.

[48 FR 55106, Dec. 9, 1983]

§ 1945.146 Memoranda of Understanding.

See the appropriate section of this chapter for memoranda pertaining to all Farmer Program loans. The following memoranda items also apply to this subpart:

(a) Memorandum of Understanding Between Commodity Credit Corporation and FmHA (Exhibit A to Subpart A of Part 1962 of this chapter).

(b) Memorandum of Understanding and Blanket Commodity Lien Waiver (Exhibit B to Subpart A of Part 1962 of this chapter).

(c) Memorandum of Understanding with the Farm Credit Administration (Exhibit A to Subpart R of Part 2000 of this chapter).

§ 1945.147 State supplements.

State supplements will be issued as necessary to implement this subpart.

§ 1945.148 FmHA forms.

See Exhibit A of this subpart.

§ 1945.149 Additional loans.

Additional EE loans may be made for the same purposes and under the same conditions as an initial EE loan provided:

(a) The additional loan will not cause either the unpaid principal balance of the EE indebtedness to exceed **$400,000** or the limitation found in § 1945.117(d)(3) of this subpart to be circumvented.

(b) All outstanding notes may be consolidated for EE loans for operating purposes in accordance with Subpart S of Part 1951 of this chapter.

[46 FR 28331, May 26, 1981, as amended at 53 FR 35716, Sept. 14, 1988]

§ 1945.150 General provisions.

(a) In performing the FmHA functions with respect to EE loans, the advice and assistance of OGC may be sought and followed on any legal matter.

(b) The State Director may delegate to staff members those administrative duties and responsibilities stipulated in this subpart.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Source: 53 FR 30392, Aug. 11, 1988, unless otherwise noted.

§ 1945.151 Introduction.

(a) *Policy.* This subpart prescribes the policies, procedures, and authorizations of the Farmers Home Administration (FmHA) for making insured emergency (EM) loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers), as provided by law. FmHA's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to applicants/borrowers and FmHA personnel involved in making EM loans.

(b) *Program administration.* The County Supervisor is the local contact person for applicant processing, loan making, and loan servicing activities.

§ 1945.152 Program objectives.

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farmers, so that they can return to normal farming operations after sustaining substantial losses as a result of a declared/designated disaster. EM loans are made to assist eligible disaster farm victims rehabilitate and resume their normal operations. This objective will be accomplished through the extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this chapter. The borrower has the responsibility of achieving the objectives of the loan. The borrower accomplishes this by repaying the loan according to the planned repayment schedule, maintaining FmHA security, using loan funds for planned purposes only and following a plan of operation agreed upon with FmHA.

§ 1945.153 Loans for citrus grove rehabilitation or reestablishment.

Exhibit D of this subpart, which deals with loans made to operators of citrus groves, modifies some of the provisions contained in this subpart.

§ 1945.154 Definitions and abbreviations.

(a) *Definitions.*—(1) *Applicant.* The person or entity conducting the farming operation at the time of the disaster and making a request for EM loan assistance from FmHA.

(2) *Approval official.* An FmHA official who has been delegated loan approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office (see FmHA Instruction 1901-A, Exhibit C).

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or

selected environment. Aquatic organisms are fish (the term "fish" includes any aquatic gilled animal commonly known as "fish," as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a written permit or lease issued to the applicant and the permit or lease must specifically identify the waters to be used solely by the applicant.

(4) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

(5) *Calendar year.* The 12-month period beginning January 1 and ending December 31 of any given year.

(6) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(7) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

(8) *Eligible area.* A county or similar political subdivision in which EM loans are made available.

(9) *Established farmer.* A tenant-operator or owner-operator of a family farm who was actively participating in the operation and management of a farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. If the applicant is a cooperative, a corporation, a partnership or a joint operation, it must be primarily engaged in farming, *i.e.*, the applicant entity must derive over fifty percent (50%) of its gross income from all sources from its farming operation. The gross farm income figures will be taken from the proposed annual plan or farm budget that will cover the next projected 12-month period (or crop year).

(10) *Family farm.* A farm or ranch as defined in § 1941.4 of Subpart A of Part 1941 of this chapter.

(11) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in the production of crops or livestock and meet the requirements of paragraph (a)(10) of this section. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(3) of this section and includes nonfarm operations which meet the requirements set forth in paragraph (a)(23) of this section. It also includes a residence which, although physically separate from the farm aceage, is ordinarily treated as a part of the farm in the local community.

(12) *Farm and home plan.* For the purpose of this regulation, any reference to farm and home plan(s) means any farm planning and/or recordkeeping system(s) acceptable to the loan approval official. This includes but is not limited to: Form FmHA 431-2, "Farm and Home Plan;" farm budgets; State University Computerized Farm Planning Systems; etc.

(13) *Farming enterprise.* The business of producing and marketing crops, livestock, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials.

(i) *Single enterprise.* An enterprise which constitutes an integral part of an applicant's total farming operation. Some crops such as corn may be produced as a cash or feed crop. In such cases, the actual acres produced for each purpose for the best 4 of the past 5 years will be used in determining losses for each single enterprise. The following are examples of single enterprises:

(A) All cash field crops;

(B) All cash vegetable crops;

(C) All cash fruit and nut crops;

(D) All feed crops fed to applicant's own livestock. A livestock enterprise must be a basic part of the farming operation in order for feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops;

(E) Beef operations;

(F) Dairy operations;

(G) Hog operations;

(H) Poultry operations;

(I) Aquaculture operations; and

(J) All other operations (*i.e.,* trees grown for timber, etc.)

(ii) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total family farming operation.

(14) *Fixture.* Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

(15) *Hazard insurance.* Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that which is required by law.

(16) *Household contents.* The essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, etc. Excludes all luxury items including jewelry, furs, antiques, paintings, etc.

(17) *Incidence period.* The specific date(s) during which a disaster occurred.

(18) *Insured loan.* A loan made directly by FmHA as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA personnel.

(19) *Irregular payment schedule.* To schedule the payment of interest in part and/or principal in whole or in part.

(20) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

(21) *Majority or controlling interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership, or joint farming operation.

(22) *Market value.* The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

(23) *Nonfarm enterprise.* Any nonfarm business enterprise including recreation which is closely associated with the farming operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as custom farm work on other farms, raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(24) *Normal year's production.* The normal year's production is the average per acre yield or production per animal unit of the 4 better years out of the 5 years immediately preceding the disaster year.

(25) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. The entity must:

(i) Be recognized as a partnership by the laws of the State(s) in which the entity will operate a family farm;

(iii) Be authorized to own real and/or personal property;

(iii) Be able to incur debts in its own name.

(26) *Physical loss.* Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock; livestock products; harvested crops; sup-

plies; and growing crops and pasture which will be replanted/reestablished. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(27) *Feasible Plan.* A feasible plan is one which meets the requirements of § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter.

(28) *Production loss.* The reduction in normal production, directly attributable to the natural disaster, of yield per acre and/or quality of crops produced, of quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increase in numbers of livestock units. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(29) *Qualifying disaster.* A major disaster, Presidential Emergency, or natural Disaster as defined in Subpart A of this part.

(30) *Qualifying physical loss.* A loss caused by damage to or destruction of physical property that is essential to the successful operation of the farm; and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

(31) *Qualifying production loss.* The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise, which is a basic part of the total farming operation. Losses of livestock increases e.g., calves, pigs, etc., are considered production losses, except when live animals are destroyed. When an animal is killed, lost or sold because of injury or reduced production potential caused by the disaster, it is considered a physical loss. Reductions in the production of feeder livestock and livestock products, or reductions in weight gain of such animals due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed. When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessibility to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Such production losses will be calculated based on the reduction from the normal year's (full year's) production which was caused during the disruption period and the period needed to bring production back up to the normal level.

(32) *Related by blood or marriage.* As used in this subpart, individuals who are related to one another as husband, wife, parent, child, brother or sister.

(33) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

(34) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(35) *Subsequent loans.* Any EM loans processed by the Finance Office after it processed the first EM loan to a borrower. The disaster designation number is not considered in determining whether an EM loan is a subsequent loan.

(36) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted.

For both physical and production losses, the termination date is 8 months from the date of the disaster declaration/determination/notification.

(b) *Abbreviations.* The following abbreviations are used in this subpart:

(1) *ASCS*—Agricultural Stabilization and Conservation Service.

(2) *ECP*—Emergency Conservation Program.

(3) *EFAP*—Emergency Feed Assistance Program.

(4) *EM*—Emergency Loans.

(5) *FCIC*—Federal Crop Insurance Corporation.

(6) *FEMA*—Federal Emergency Management Agency.

(7) *FIA*—Federal Insurance Administration.

(8) *FmHA*—Farmers Home Administration.

(9) *FMI*—Forms Manual Insert.

(10) *INS*—Immigration and Naturalization Service.

(11) *OGC*—Office of the General Counsel.

(12) *SBA*—Small Business Administration.

(13) *UCC*—Uniform Commercial Code.

(14) *USDA*—United States Department of Agriculture.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21530, May 25, 1990]

§ 1945.155 Relationship between FmHA and other federal agencies.

(a) *ASCS and FmHA.* A Memorandum of Understanding between the ASCS and FmHA on disaster assistance pertaining to the exchange of information essential to the elimination of duplication of compensatory disaster benefits from the two participating agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000-JJ (available in any FmHA Office).

(b) *FCIC and FmHA.* A Memorandum of Understanding between the FCIC and FmHA pertaining to crop insurance and exchange of information essential to the elimination of duplication of compensatory disaster benefits from the two participating Agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000-N (available in any FmHA office).

[55 FR 21530, May 25, 1990]

§ 1945.156 The test for credit and certification requirements for availability of credit elsewhere.

(a) *Applicants who certify that other credit is available.* Applicants applying for EM loan assistance who certify they are *able* to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs are not eligible for such assistance.

(b) *Applicants who certify that other credit is NOT available.* Applicants who certify they are *not able* to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this paragraph (b).

(1) *Test for credit for individuals and entities.* Applicants must be *unable* to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taken into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in *all assets*, including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, partnerships and joint farming operations and the members, stockholders, partners and joint operators, both individually and collectively, must be unable to provide the required financing from their own resources or with credit obtained from pledging those resources to other lenders. Form FmHA 1940-38, "Request for Lender's Verification of Loan Application," must be completed (with particular attention that Item 2A is completed) and filed in the applicant's County Office case folder; and any additional facts concerning the findings, *in all cases*, must be documented and recorded in the running case record.

(2) *Test for credit certification requirements.* Applicants will certify in writing on the application form, and the County Supervisor *shall* make the determination whether or not adequate and suitable credit is available elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of

time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant *can* obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that the applicant is *not* eligible for an EM loan(s).

(i) For applicants whose total EM loan(s) request is for $300,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit needed from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one agricultural lender in the local community, to determine whether such lender(s) will provide the credit. Form(s) FmHA 1940-38 must be completed by all lending sources contacted, unless an exception is made under the provisions of paragraph (b)(2)(i)(C) of this section. Only when the applicant is not able to obtain a loan, from one or more of the lending sources contacted, will the applicant be considered for an EM loan. If the County Supervisor believes it necessary, the action required in paragraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA 1940-38, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appears from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be recorded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) *must be contacted in all cases* and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than $300,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of $1 million or more and produces evidence that the necessary credit cannot be obtained in the local community, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA 1940-38 must be completed by all lending sources contacted, returned to the County Office and handled in accordance with paragraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Form FmHA 1940-38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(3) *Use of nonessential assets (both farm and nonfarm) when seeking other credit.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit to the applicant, the County Supervisor *will*, as a condition of loan approval, require the applicant and the owner(s) of the applicant entity to list all assets (both essential and nonessential) setting forth: Why those assets and any income derived from them are needed; and how such assets and the income derived from them will be used for essential family living expenses and for maintaining a sound family farming operation(s). The loan approval official must determine that the appli-

cant's plan for use of *all* assets and the income derived there-from is acceptable. Any assets not contributing to essential family living expenses and maintenance of a sound family farming operation *will* be considered nonessential; and the applicant and the owner(s) must, as a condition of loan approval, agree to sell the nonessential assets. The proceeds from such sale(s) *will* be used to reduce the amount of EM loan(s) requested, provided the assets can be sold prior to the EM loan(s) closing. If the nonessential asset(s) cannot be sold before loan(s) closing, the ownership interest in those assets *will* be mortgaged and/or assigned to FmHA; and a written agreement prepared and executed, in a manner approved by the OGC, to sell those assets at their present market value, within a specified period not to exceed one year from the date of loan(s) closing. The proceeds from the sale of such assets will be applied as an extra payment on the FmHA loan carrying the lowest interest rate, which is secured by the asset(s) sold.

§§ 1945.157—1945.160 [Reserved]

§ 1945.161 Receiving and processing applications.

(a) *Applications*. Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

(1) Applications for initial EM loans for each disaster will be received only in areas where EM loans are made available in accordance with Subpart A of Part 1945 of this chapter, and must be postmarked or received in the County Office before the specified 8-month termination date has passed. *These applications must be processed within twelve months after they are filed.*

(2) An applicant conducting a family farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster housing loan borrowers for that portion of the maximum EM loan originally authorized but not requested initially from FmHA or SBA, provided the application is *received within 8 months of the disaster declaration/determination/notification date.*

(4) Applicants who are determined to be *ineligible* for an EM loan may be considered for other types of FmHA farm loans, when appropriate.

(b) *Statement of losses*. Applicant's statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA 1945-22, "Certification of Disaster Losses."

(c) *ASCS verification of farm acreages, production and benefits*. From information obtained on Form FmHA 1945-22, the County Supervisor will send a separate Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS County Office for verification of ASCS registered farm(s) that the applicant has certified constituted part of the disaster year's operation. ASCS records of acres of crops planted/grown in the disaster year, actual (proven) yields in the disaster year, ASCS established yields for the disaster year, ASCS emergency payments and the other information requested on that form must be obtained. The use of Form FmHA 1945-29 is optional for EM loans made for physical losses. It is required for EM loans made for production losses on crops covered by ASCS programs.

(d) *Evidence of operation*. If the applicant is a cooperative, corporation, partnership, or joint operation, it will provide evidence that it was operating as a cooperative, corporation, joint operation or partnership at the time the disaster loss occurred, or has changed its form in accordance with § 1945.162(1) of this subpart, after the loss occurred.

§ 1945.162 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and additionally will be ineligible for the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *Test for credit.* Applicants must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(b) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see § 1945.154(a) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District Office. (See Exhibit B of Subpart A of Part 1944 of this chapter.) The completed form will be mailed to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) More than a 50 percent interest in the cooperative, corporation, partnership or joint operation must be owned by United States citizens (see § 1945.154(a) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

(c) *Established farmer.* An applicant must be an established farmer (as defined in § 1945.154(a) of this subpart). An applicant who conducts the farming operation as an individual must manage the farming operation. At least one stockholder, member, partner or joint operator of an entity applicant must manage the farming operation. One who does not devote full time to the farming operation may be considered the manager provided that person visits the farm at sufficiently frequent intervals to exercise control over the farming operation, makes decisions and gives directions on how the operation(s) should be run, and sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the members, stockholders, partners or joint operators. The following are not considered to be established farmers for EM loan purposes:

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, a partnership or a joint operation; a partnership or joint operation with over 50 percent of the ownership held by an estate, trust, corporation, another partnership or another joint operation.

(2) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses

through contracts or business arrangements with farmers. However, a grower under contract with an integrator or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM loans for physical losses and production losses. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth the contract.

(d) *Operate in a disaster area.* An applicant for an EM loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with Subpart A of Part 1945 of this chapter; and must have filed an application before the expiration date. When an applicant's farming operation is located both in a designated county(ies) and a non-designated county(ies) refer to § 1945.163(a)(2)(xx) of this subpart.

(e) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an EM loan. Production losses must be to property in which the applicant has an ownership interest or interest in which a security interest can be obtained. Physical losses must be to property in which the applicant has an ownership interest. See § 1945.163 of this subpart for the methods of determining qualifying losses.

(f) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(g) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (1 year's production and marketing cycle within the last 5 years immediately preceding the application) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(h) *Honestly endeavor.* The applicant will honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(i) *Family farm.* The applicant's farm must be a family farm as defined in § 1945.4 of Subpart A of Part 1941 of this chapter. If the applicant was conducting larger than a family farm at the time of the disaster but will be conducting a family farm at the time an EM loan is closed, the applicant meets this eligibility requirement.

(j) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations but intend to continue farming with EM loan assistance meet this requirement.

(k) *EM loan(s) to cooperatives, corporations, joint operations or partnerships.* When an EM loan is made to a cooperative, corporation, partnership or joint operation, only one initial EM loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, partner, or joint operator may qualify for a separate EM loan to cover losses to a *separate farming operation* which the applicant conducts as an individual on a different farm tract.

(1) If the members, stockholders, partners or joint operators holding a majority interest *are related* by blood or marriage, at least one member, stockholder, partner or joint operator must operate the family farm.

(2) If the members, stockholders, partners or joint operators holding a majority interest *are not related* by blood or marriage, the majority interest holders must operate the family farm.

(3) If an entity applicant has an operator interest in any other farming operation, that farming operation must be no larger than a family farm.

(l) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does *not* make the applicant ineligible for EM loan assistance. (Examples of changes in form are as follows: An entity may split into its individual members or into more than one entity; one or more individuals may leave an entity; an individual may incorporate; a partnership may become a joint operation, a corporation, a cooperative, or another partnership; a corporation may become a partnership, a joint operation, a cooperative, or another corporation; a cooperative may become a joint operation, a partnership, a corporation, or another cooperative; a joint operation may become a partnership, a corporation, a cooperative or another joint operation.) Such an applicant is eligible for EM loan assistance subject to *all* of the following limitations and qualifications:

(1) The applicant must meet all FmHA eligibility requirements at the time of loan closing.

(2) The applicant must *not* conduct an operation larger than the operation that was being conducted at the time of the disaster.

(3) In the case of an entity applicant, all of the individuals who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster. Heirs must have been participating in the operation at the time the disaster occurred and must be engaged in the farming operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in the farming operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation(s) as it existed at the time of the disaster, in accordance with § 1945.163 of this subpart. Then look at the individual applicant *or* the individual members, stockholders, partners or joint operators of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the percentages of all owners who had an interest in the entity that suffered the disaster losses. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21530, May 25, 1990]

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

Disaster losses will be reported by applicants on Form FmHA 1945-22, "Certification of Disaster Losses," which states the physical and production losses suffered as a result of the declared/designated disaster. The applicant will report, on Form FmHA 1945-22, total acres and actual yields for *all* crops planted and/or grown in the disaster year, and the number of *all* animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in paragraph (a) of this section. This form will be completed and submitted to the County Office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945-22 will be the primary basis for FmHA's calculation of qualifying losses, eligibility for EM loan(s) based on production losses, and an applicant's maximum amount of EM loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945-22 can be supported by written records. Applicants will be asked to identify on that form any single farming enterprise they consider basic to the success of their total farming operation, and in which they have suffered a disaster loss. When an applicant's certified production loss claims seem unreasonable, they will be verified and the findings documented. Physical loss claims will be verified by requiring the applicant to furnish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicant's own pictures, written certification by other persons or, when practical, by visual inspections by FmHA employees.

(a) *Production losses.* (1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 year's production. The applicant *must* select the year to be eliminated. The year selected to be eliminated *must* be the same year for all farm enterprises (i.e., *all* crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. A State supplement will be issued which will be used in connection with paragraph (a)(1)(iii) of this section. The State supplement will contain average production figures provided by the USDA State Crop and Livestock Reporting Service, when available. If those records are not available, the State supplement will contain statistical data on production from similar State or Federal bodies. When this information is available by county, county averages will be used. If available only by State, the State averages will be used throughout the State. In those States where neither a Country nor State average is available for an agricultural commodity(ies), the State Director, with the advice of representatives of other Federal and State agricultural agencies, will establish County or State averages and advise County Offices of these averages in the State supplement. State Directors and Farmer Programs Chiefs in adjoining States will consult with each other before releasing these figures. Applicants will identify, on Form FmHA 1945-22, the production record source(s) to be used in determining the normal year's production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record source(s) for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records or ASCS "actual yields,"* for those years for which they are available. When the ASCS "actual yields" are used, they will be documented on Form FmHA 1945-29. If actual yields are not available for all of the 5 crop year(s), the applicant will first use a combination of actual records which are available and the ASCS established yield(s) for the disaster year, as specified in subparagraph (ii). If ASCS established yields are not available for the disaster year, then the applicant will use a combination of actual records which are available and County or State averages, as specified in paragraph (a)(1)(iii).

(ii) *The ASCS "established yields."* When this production record source is used, the applicant must obtain the information from ASCS and submit it with the application to FmHA. The disaster year established yield, as provided by ASCS for any given crop, will be used as the yield for those years for which actual yields are not available and combined with actual yields to determine the normal year's yields. When there are no actual yields available for any of the 5 years, and there is an ASCS established yield available for the disaster year, the established yield will be considered as the normal year's yield, without any calculations. This production record source will be used only for those years and those commodities for which the applicant's or ASCS actual yields are not available.

(iii) *The County or State average yields.* These average yields will be found in the State supplement mentioned in paragraph (a)(1) of this section. This production record source will be used only for those commodities and those years for which neither the applicant's reliable farm records nor ASCS actual or established yields are available. Only when there are no "actual yields" or "established yields" available will County or State average yields be used. However, County or State average yields may be combined with the actual yields when ASCS established yields are not available, but County or State average yields will not be combined with established yields when established yields are available for the disaster year.

(iv) When an applicant's production loss is on new land being developed, or to young perennial crops such as fruits and nuts, and mature production potential has not been reached, the State Director will establish normal year yields on a case-by-case basis.

(2) FmHA loan official(s) will complete Form FmHA 1945-26, "Calculation of Actual Losses."

(i) In calculating production losses, the same established unit prices will be used for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with paragraph (a)(2)(iv) of this section. In the production loss calculation, those crop production yields and production per animal unit records authorized in paragraphs (a)(1)(i), (ii) and (iii) of this section will be used.

(ii) Information certified on Form FmHA 1945-22 for the disaster year for all single enterprises (as defined in § 1945.154(a)(13)(i) of this subpart), which suffered a loss due to the disaster, will be transposted from Form FmHA 1945-22 to the appropriate places on Form FmHA 1945-26. The FmHA official completing Form FmHA 1945-26 is responsible for verifying loss information provided by the applicant. Information obtained from ASCS on Form FmHA 1945-29 will be cross checked with information provided by the applicant on Form FmHA 1945-22. Whenever there is a discrepancy between an applicant's acreage and/or yield information provided on Form FmHA 1945-22, by the applicant, and the information provided by ASCS on Form FmHA 1945-29, the applicant will be told about the discrepancy and the applicant and the County Supervisor will complete Form FmHA 1945-22 so that it accurately reflects the applicant's acreage and yield.

(iii) When the applicant's disaster loss is due to a reduction in *quality* with or without a quantity loss, rather than a reduction in *quanity* only, the applicant will be given credit for quality loss by adjusting the actual production yield downward. This will be accomplished by converting the dollar value of the quality loss to a yield reduction equal in value to the quality loss. When a quality adjustment is necessary, the basis used in making the adjustment will be the applicant's *accurate* records of production and sales receipts showing the actual price received and the grade of the commodity for the five years immediately preceding the disaster year. The normal year's quality will be established by eliminating the poorest of the five-year record. The applicant must select the year to be eliminated. The burden of providing this information rests with the applicant.

Example I: A farmer has accurate records indicating that the farmer's normal year's production of corn is 100 bushels per acre of No. 2 corn. Due to flooding after the ears were set and mature, the corn was coated with a filmy residue. This resulted in the quality grade being reduced from No. 2 to No. 3. The commodity price established for No. 2 yellow corn was $3.00 per bushel. The farmer, due entirely to a *reduction in quality*, received $1.50 per bushel. Therefore, when computing the disaster loss, the *quantity* produced would be reduced by 50% to reflect the *quality* loss.

	Established criteria	Disaster year actuals
Yield	100 bu/acre	100 bu/acre
Grade quality	No. 2 yellow corn	No. 3 yellow corn
Established price per bushel	$3.00	$1.50 (actual received)

Price per Unit Disaster Year ($1.50) Divided by Price per Unit Normal Year ($3.00) equals Quality Reduction (.5 or 50%)

Quality Reduction × Disaster Year Actual Production = Quality (for loss calculation)

.5 × 100 bushels per acre = 50 bushels per acre

50 bushels per acre will be entered on Form FmHA 1945-26 as the disaster year yield to reflect the quality reduction.

Example II: A cotton farmer usually produces No. 2 cotton. In the disaster year, the farmer produced No. 3 cotton and this quality loss resulted in a grade reduction amounting to a dockage of $100.00 per bale (550 lbs.). The farmer's ASCS established yield is 550 lbs. per acre. The farmer produced 600 lbs. per acre in the disaster year. The established price for cotton for the disaster year is $330.00 per bale (.60 cents per pound).

	Established criteria	Disaster year actuals
Yield	550 lbs./acre	600 lbs./acre
Grade	2	3
Price per bale	$330.00	$230.00

$$\frac{230}{330} = .70$$

.70 × 600 = 420 lbs. per acre

420 lbs. per acre would be entered on FmHA Form 1945-26 as the disaster year yield to reflect the quality reduction.

In this example the farmer would not be eligible for an EM loss loan since the farmer suffered only a 24 percent loss.

$$\frac{420 \text{ lbs./acre}}{550 \text{ lbs./acre}} = 76\%$$

The calculations used for a quanity reduction due to quality losses must be documented on Form FmHA 1945-26 or on an attachment to that form.

(iv) The gross dollar value of production losses will be computed for all crops and all livestock enterprises, which were a part of any single enterprise that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal year's production. Unit prices for all agricultural commodities produced commercially in each State will be established on a Statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued not later than *February 15* of each year. These commodity prices will be established by averaging the *monthly market prices of each commodity for the 12-month period preceding the calendar year in which the disaster occurs.* The monthly average market prices report, "Agricultural Prices," prepared by the National Agricultural Statistics Service (NASS), formerly the Statistical Reporting Service (SRS), will be mailed to each State Office from the FmHA National Office the first week of each month for the previous month. This report provides the average monthly prices for *all major* agricultural commodities produced in each State. For major commodities not reported monthly by NASS, State Offices will also be sent the NASS publication, "Crop Values Summary." This publication provides a 3-year history of seasonal average prices, by State and United States average, for all crops of any significance produced in the 48 contiguous States and Hawaii. Prices found in this annual publication, available by February 1 of the year succeeding the year being reported, are to be used as a *guide only* in establishing the annual price list of commodity prices only for those commodities for which the monthly average prices are not reported. State Directors *will* consult with other agricultural agency representatives and other agricultural lenders in the local area; and State Directors and Farmer Program Chiefs in adjoining States *will* consult each other for additional guidance before releasing their commodity price lists. Once established, these prices will not be changed for any EM loan processed under any disaster occurring on or after February 1 of that calendar year through January 31 of the next calendar year. These monthly and annual reports will be retained and used for reference each year when preparing the annual price lists of average commodity prices to be used Statewide for calculating actual production loss values, for all disasters that occur during the ensuing 12-month period.

(v) The amount of actual production loss will be calculated for the single enterprise which is a basic part of the farming operation (see § 1945.154(a)(13) of this subpart) by subtracting all financial assistance, verified as having been received or to be received, through any disaster relief program, and all compensation for disaster losses provided by any source (i.e., crop insurance indemnity payments, ASCS disaster program payments) for that enterprise, from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

(vi) Actual losses for tobacco, peanuts and other crops grown under acreage and/or poundage control will not be calculated differently than any other crop; i.e., the calculations must not include the dollar value of carry over surplus poundage from previous year's(s') production or underproduced pounds to be sold or produced in future years. The value of underproduced poundage allotments and quotas must not be subtracted from the loss. Production from all "controlled" crop acres planted in the disaster year, including acreage above the producer's allotments and quotas, will be considered even though the carry-over crop is not eligible for price supports until the next marketing year.

(vii) Actual losses for spring and fall annual crops of the same species will be treated as two separate crop losses and listed separately on Forms FmHA 1945-22 and 1945-26. The crop(s) not affected by the disaster will be considered as having produced a normal year's yield.

(viii) The dollar value of the actual production loss for the single enterprise which is a basic part of the farming operation as designated by the applicant in Item F, Form FmHA 1945-22, will be divided by the previously calculated normal year's gross income for that enterprise. The result should be rounded to the nearest whole number. To illustrate, if the calculation shows a 29.49 percent production loss, round it down to 29 percent. If the calculation shows a 29.50 percent loss round it up to 30 percent. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in *any* single enterprise (see § 1945.154(a)(13) of this subpart) which is a basic part of the farming operation equals or exceeds 30 percent, and the applicant is otherwise eligible, EM loan assistance will be considered.

(ix) Once eligibility is established, based on production losses, the total production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of all single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all financial assistance verified as having been received or to be received through any disaster relief program, and all compensation for disaster losses provided by any source for those enterprises.

(x) The maximum EM loan for production losses is limited to *80 percent* of the total calculated actual production loss sustained by the applicant.

(xi) Production losses to hayland, pasture and rangeland used for grazing livestock owned by the applicant must be based on the production from only those acres which are utilized in the disaster year. Losses may be calculated by one of three methods when approved by the State Director. The State Director will decide which one of the following three methods will be used throughout the State to calculate losses to pasture and rangeland; and issue a State supplement to this subpart, setting forth the method(s) to be used Statewide.

(A) *The price per acre method.* The price per acre method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year's gross dollar value. To calculate this, multiply *the number of acres available to be grazed for the disaster year by the* *established rental charge per acre per mongh* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the 5 preceding years.*

(*2*) Determine the disaster year gross dollar value. To calculate this multiply *the number of acres grazed during the disaster year by the established rental charge per acre per month* (as determined in accordance with paragraph (a)(2)(xi)(A)(*1*) of this section); *by the number of months the livestock were able to be grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(A)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(A)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(B) *The charge per head or animal unit method.* The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established rental charge per animal or per animal unit per month* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the preceding 5 years.*

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established normal rental charge per animal or per animal unit per month* (as determined in accordance with paragraph (a)(2)(xi)(B)(*1*) of this section); by *the number of months grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(B)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(B)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) *The forage equivalent method.* The forage equivalent method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by the average number of pounds or tons of forage equivalent produced per acre per year during the average of the highest 4 out of the preceding 5 years for forage of the type being used in this calculation. (The State Office will set forth the forage equivalent values to be used or the methodology to be used for deriving this value, in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination.)

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of acres grazed during the disaster year by the established price per pound or ton* (this figure is established by the State Director in accordance with paragraph (a)(2)(xi)(C)(*1*) of this section); by *the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year.* (See paragraph (a)(2)(xi)(C)(*1*) of this section for further information.)

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(C)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(C)(*1*) of this section) to determine the value of pasture loss during the disaster year.

(xii) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph as follows: Add all income that is derived from the enterprise to the variable costs which were not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(xiii) When a crop can be only partially planted due to a disaster *or* when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as set out in paragraph (a)(2)(xii) of this section.

(xiv) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945-22 for the disaster year, but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production losses, subtract the normal costs of harvesting and marketing which were not incurred for crops that were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop, and the actual yield for the substitute crop on Form FmHA 1945-22. On Form FmHA 1945-26, the dollar value of the substitute crop must be added to the dollar value of the disaster year's production and income.

(xv) Losses to feed crops will be established by determining the normal year's gross dollar value of those crops and substracting the disaster year's gross dollar value of feed crops. The difference establishes the disaster year's gross dollar loss for feed crops. The gross dollar value of feed crops produced is derived by multiplying the number of feed crop acres by the yield per acre by the unit price.

(xvi) When an applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, that is a management decision; and the difference between what the sale weight would have been if the livestock had been fed for the normal period and the disaster year's lighter, premature sale weight may *not* be claimed as a loss.

(xvii) Calculation of production losses to livestock enterprises may be based either on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; *or* on loss (from normal) of weight gain of the livestock or livestock products produced, but not both. Normally, calculations of production losses to livestock enterprises will be based on feed crop(s) and pasture losses. In the case of foundation herds of breeding animals; however, the value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials normally will calculate production losses to this type of livestock operation based on reductions in the natural increase in numbers and animal unit weight of such offspring. (Example available in any FmHA office.)

Example:

A rancher has accurate records indicating that the rancher's 200 head foundation breeding cow herd produced a normal calf crop average of 85 percent (170 calves) with an average weaned weight of 350 pounds per calf. As a result of a drought, the rancher found it necessary to cull the cow herd by 50 cows over the normal number culled.

The predisaster value of the cows was $600 per head. The rancher received 35 cents per pound for the cull cows, which had an average weight of 1100 pounds.

Additionally, the rancher's calf crop was only 70 calves with an average weight of 240 pounds in the disaster year (DY). Therefore, the rancher would have sustained a physical loss on the cow herd (see § 1945.163(b)(6)(i)(B) and a production loss on the calf crop.

The established price for calves is 60 cents per pound.

Calculations:

The rancher's normal year's (NY) calf crop was 85 percent. Since the rancher reduced the breeding herd by 50 cows, an adjustment must be made to determine the calf losses. The reduced herd size is now 150 cows.

150 cows × 85% = calves (NY cow calf crop from a herd of 150).

Normal year	128×.60×350	=	$26,880	NY income
Disaster year	70×.60×240	=	$10.080	DY income
			$16,800	Loss

16,800
———
26,880 = 63% production loss

Additionally, an EM loan may be made based on the physical loss of 50 cows. (See example in § 1945.163(b)(6)(i)(B).

(xviii) Any claims of production losses from the applicant will be verified by FmHA when the applicant's claim(s) appears to be unreasonable.

(xix) Claims of production losses for orchard crops (fruits or nuts) will be considered only for the crop loss directly attributable to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and a non-designated county(ies), eligibility will be established based on losses to a single enterprise which constitutes a basic part of the total farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's actual yields, both in the designated and non-designated counties, will be used to determine losses. Compensatory payments will be subtracted as explained in paragraph (a)(2)(v) of this section when determining eligibility. The amount of the production loss loan will be limited to the production loss sustained in the designated county(ies) only, minus any compensatory payments received or to be received for that portion of the farming operation located in the designated county(ies).

(xxi) The County Supervisor will assign normal yields to all unplanted acreage covered by a Payment in Kind (PIK) contract, when calculating crop production losses on Form FmHA 1945-26.

(b) *Physical losses.* (1) In order to qualify for an EM loan(s) for physical losses, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of nonessential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source from the value of all actual physical losses caused by the disaster.

(6) The physical loss for the following items equals the market value at the time of the disaster for items lost, damaged or destroyed by or as a result of the disaster:

(i) Livestock.

(A) Death of an animal(s) caused by the disaster.

(B) Disaster related damage to an animal's(s') health, which has impaired or reduced its normal production capability and its market value. This includes forced reductions of foundation breeding stock caused by the disaster. Physical losses, under these conditions, would be calculated by establishing a dollar value per head, or unit, at the time the disaster occurred, and deducting the reduced dollar value received from the disaster-caused sale of the animals. The difference in the two values would be considered a physical loss. (*THE ANIMALS SOLD MUST BE OVER AND ABOVE THE NUMBERS NORMALLY CULLED EACH YEAR*).

Example:

A physical loss would be calculated as follows:

Predisaster market value—50 cows × $600/cow = $30,000

Price received for cull cows—50 cows × 1100 lbs. × 35¢ = $19,250.

Physical loss = $10,750 ($30,000—$19,250)

(ii) Livestock products on hand or stored.

(iii) Harvested crops on hand or stored.

(iv) Supplies on hand.

(v) Essential machinery and equipment.

(7) The actual physical loss for farm dwellings and essential household contents to be used by the operator and existing labor is the amount required to repair or replace the dwelling and/or household contents with a dwelling and/or contents of like standards, size and quality of that being replaced which will meet all applicable code requirements, and which will provide permanent, adequate, decent, safe, sanitary and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like standards, size, quality and capacity of that being replaced which will meet all applicable code requirements and which will adequately meet the needs of the farming operation.

(9) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose. (See Exhibit D of this subpart for physical loss loans to citrus growers.)

(10) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees, at the time of the disaster, less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the damaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(11) The actual physical loss to growing crops or pasture is the cost of cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to *reestablish* the crop(s) or pasture. These costs can exceed the market value of the crop(s) or pasture at the time of the disaster.

(12) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an EM loan cannot

exceed the total itemized expenses listed by the applicant.

(13) EM loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in § 1945.173(b) of this subpart.

(14) When an applicant has *dwelling* losses only, the applicant may apply for either an EM loan or SBA disaster housing loan to restore or replace the dwelling and personal household contents affected by the disaster.

(c) *Personal household content losses (Subtitle B purposes).* (1) In order to qualify for EM loan assistance for this purpose, the damaged or destroyed household property must be essential to the maintenance of the household; and if not repaired or replaced, the farmer would be unable to remain on the property and continue the farming operation on a reasonably sound basis.

(2) The claimed value of all household losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement.

(3) Labor, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary household repairs and replacements.

(4) Damage to or destruction of nonessential household items will not be replaced or repaired with EM loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for those losses.

(5) The maximum EM loan(s) for repair or replacement of personal household contents is $20,000.

(6) The EM loan(s) will be determined by subtracting all insurance claims and other compensation received or to be received for household losses from the cost of repairs or replacement value of the essential household items.

(d) *Compensation for losses.* All financial assistance provided through any disaster relief program and all compensation for disaster losses received from any source by an EM loan applicant will reduce the applicant's loss by the amount of such compensation. All such compensation will be considered in determining the applicant's eligibility for EM loan assistance and the maximum amount of loss loan entitlement. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments *will* be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as compensation).

(e) *Maximum EM loans.* This amount will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this will not exceed the sum of the maximum production loss (paragraph (a)(2)(x) of this section) and the maximum physical loss (paragraph (b) of this section) or *$500,000*, Whichever is the lesser. Indebted EM loan borrowers can receive additional EM loans based on a subsequent disaster(s), but not to exceed *$500,000* for each additional qualifying disaster. No applicant or individual member of an entity applicant can be liable for more than $500,000 in EM loans per disaster.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21530, May 25, 1990]

§ 1945.164—1945.165 [Reserved]

§ 1945.166 Loan purposes.

(a) *Policy on use of EM loan funds.* (1) The maximum amount of an EM loan(s), in addition to the limitations contained in § 1945.163(a)(2)(x) and (e) of this subpart, is further limited to the actual dollar loss, or the actual amount of essential family, farm, and nonfarm enterprise credit, whichever is the lesser, that the applicant needs to carry on normal operations. EM loan funds will not be used to finance a nonfarm enterprise, unless the loan is made to an individual applicant *and* such enterprise is needed to support a reasonable standard of living for the family. The use of EM loan funds will be identified in the farm and home plan so that determination can readily be made as to whether such loan(s) was used for authorized purposes and compensated the borrower for all or a portion of the actual dollar loss.

(2) EM loan funds may be used for those purposes described in paragraphs (b) and (c) of this section.

(b) *Real estate (Subtitle A) purposes.* EM loans for real estate purposes may be made to *owner-operators only.* The following are authorized real estate purposes for which EM loan funds may be used:

(1) Any Farm Ownership loan purpose (see Subpart A of Part 1943 of this chapter);

(2) Replace land and/or water resources that cannot be restored due to the disaster;

(3) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(4) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made.

(5) Refinance secured and unsecured debts, including FmHA debts.

(c) *Operating (Subtitle B) purposes.* EM loans for operating purposes may be made to *owner-operators or tenant-operators.* The following are authorized operating purposes for which EM loan funds may be used:

(1) Any Operating Loan purpose (see Subpart A of Part 1941 of this chapter);

(2) Purchase and repair of essential household contents, and pay essential family living expenses. Entity operations are not eligible for loan funds to be used for these purposes.

(3) Refinance secured and unsecured operating type debts, in whole or in part, including existing FmHA debts.

(4) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, *e.g.,* fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans are not authorized for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). However, as a result of 1988 and 1989 natural disasters, the Disaster Assistance Acts of 1988 and 1989 provide for the waiver of this mandatory crop insurance requirement, but only for crops planted for harvest in 1988 or 1989. Under these waiver provisions, disaster related production losses sustained to 1988 or 1989 crops, planted for harvest in 1988 or 1989, will be counted in the eligibility calculation and the maximum EM loan entitlement determination, regardless of whether or not crop insurance was available to the applicant, or whether or not such insurance was purchased by the applicant. "Planted for harvest in 1988 or 1989" means:

(1) *For annual crops,* planted for harvest in 1988 or 1989; and

(2) *For perennial crops,* planted in 1989 or earlier and producing an annual crop for harvest in 1988 or 1989.

(b) *Relationship between EM loans and other FmHA loans.* An eligible EM loan applicant's *total* credit needs *will* be first considered through use of EM loan authorities in the maximum amount of entitlement, before other regular (FO, OL, SW) FmHA farmer program loan authorities are considered and used as a means of assisting the applicant/borrower.

(c) *Use of EM loan funds is not authorized for expansion purpose(s) beyond a family size farm.* EM loan funds *will not* be used to expand an applicant's farming, ranching, or aquaculture operation beyond that which constitutes a family size farming/ranching operation(s). This limitation is not intended to prohibit minor changes in crop or livestock enterprises, provided:

(1) Any new or changed crop or livestock system is proven for the area; and

(2) The applicant has the knowledge and ability to manage the changed operation; and

(3) Substantial new or additional capital investment is not required.

EM applicants who operate family farms (as defined in § 1941.4 of Subpart A of Part 1941 of this chapter) may, if eligible, receive regular FmHA farm ownership (FO), and/or operating (OL) loans simultaneously with their initial (EM) loan to help finance their farming operations. If a borrower expands the farming operation beyond a family size farm after receiving an EM loan, no further EM loan assistance will be given even though the borrower may suffer qualifying losses under a new declared/designated/authorized disaster.

(d) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered so long as the loan limit set out in § 1945.163 (e) of this subpart is not exceeded.

(e) *Refinancing guaranteed loans.* An EM loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances causing the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government.

(f) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over one year old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the one-year period. Any changes in the value of real estate or chattel security will be recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(g) *Recordkeeping.* EM borrowers receiving or indebted for EM loans of $100,000 or more are required to keep hard farm records on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for at least three years. (See Subpart B of Part 1924 of this chapter.)

(h) *Disbursement of loan funds.* Loan funds which will not be disbursed for specific purposes at loan closing will *not* be requested in the initial request for funds from the Finance Office. The "Loan Disbursement System" will be used to make funds available when they are actually needed. See § 1945.189 (a)(8) of this subpart for instructions on the use of supervised bank accounts.

(i) *Prohibition on guaranteeing repayment of advances from other credit sources.* FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(j) *Applicants previously indebted to FmHA.* An EM loan will not be approved if the applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1), Subpart B of Part 1956 of this chapter or if a debt settlement is currently being processed for the applicant in accordance with these regulations or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the applicant's failure to pay the loan indebtedness was the result of circumstances beyond the applicant's control; the conditions which necessitated the debt settlement or release, other then weather hazards, disasters, or price fluctuations have been removed; and the borrower's operations will afford the borrower a reasonable prospect of repaying the loan and meeting other obligations. Prior to approval of the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made. Applicants who are rejected due to debt settlement actions will be sent proper notification as outlined in § 1910.6(b)(1) of Subpart A of Part 1910 of this chapter.

(k) *Highly erodible land and conversion of wetland.* Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands for the production of an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

[53 FR 30392, Aug. 11, 1988, as amended at 54 FR 48228, Nov. 22, 1989]

§ 1945.168 Rates and terms.

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed farm and home plan, when setting the term of each loan. There must be some payment, e.g., an irregular payment, scheduled at least annually. Loans will not be scheduled for terms longer than are justified and supported by the farm and home plan. EM loans based on production losses and/or physical losses to chattels, foundation livestock and other intermediate term capital assets cannot exceed a 20 year payback; and EM loans based on physical losses to real estate, e.g., land, buildings and structures cannot exceed a 40 year payback.

(1) *Operating purposes (Subtitle B).* EM loans made for operating purposes will be scheduled for repayment as follows:

(i) Normally, loans will be scheduled for payment in a period not to exceed 7 years. However, loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the farm and home plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the County Office case file.

(ii) Loans made for production expenses under § 1945.166(c) of this subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than crops that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (iii) of this section.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for repayment when the principal income from the sale of such livestock or livestock products is planned to be received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than the livestock and livestock products that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (ii) of this section.

(iv) When conditions warrant, installments may vary in amount. However, there must be at least a partial interest payment scheduled annually. Also, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of 15 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the initial loan term to determine if rescheduling is warranted, and that there is no obligation for FmHA to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes (subtitle A).* EM loans made for real estate purposes under § 1945.166(b) of this subpart will normally be scheduled for repayment for a term not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. A longer term may be approved as warranted, but cannot exceed 40 years. The longer repayment period will be used only when it is evident the applicant will be unable to repay the loan in a shorter period. The reason(s) for giving the longer period must be well documented in the County Office case file.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in Subpart F of Part 1951 of this chapter. EM borrowers will be reviewed for graduation three (3) years after their initial loan is made and every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured.

[53 FR 30392, Aug. 11, 1988, as amended at 53 FR 35716, Sept. 14, 1988; 55 FR 21532, May 25, 1990]

§ 1945.169 Security requirements.

The County Supervisor is responsible for seeing that adequate and proper security is obtained and maintained and that the security instruments have been properly executed and recorded to protect the interest of the Government.

(a) *General requirements.* (1) Except for the modifications contained in paragraph (d) of this section, security must be of such a nature and extent that repayment of the loan(s) is assured, considering the applicant's managerial ability, soundness of the operation, and projected earnings. Security for loans may include, but is not limited to the following: Land, buildings, structures, fixtures, furniture, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interests having a mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(2) A lien will not be taken on property that cannot be made subject to a valid lien; nor will a lien be taken on subsistence livestock, household goods, small tools and small equipment such as handtools, power lawn mowers, and other items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(3) The same collateral may be used to secure two or more loans made, insured and/or guaranteed, to the same borrower. Accordingly, when an EM loan is made to an indebted FmHA guaranteed loan borrower, a junior lien may be taken on the same chat-

tels and/or real estate that serves as collateral for the guaranteed loan(s).

(b) *Personal liability.* The promissory will be signed as follows:

(1) *Individuals.* Only the applicant will sign the note as a borrower. If a cosigner is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(2) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation, and any other signatures needed, to assure the required security will be obtained as provided in State supplements.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(c) *Personal and corporate guarantees by cosigners.* (1) If a review of all credit factors indicates the need for additional security, the loan approval official may require additional personal and/or corporate guarantees by a cosigner(s), including guarantees from parent, subsidiary or affiliated companies; relatives of the applicant; or any other willing party having equity in mortgageable assets. The loan approval official will require that such guarantees be secured by collateral which has an equity value. Any security referred to in paragraph (a)(1) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under paragraph (c) of this section, if chattels, it will be serviced in accordance with Subpart A of Part 1962 of this chapter; and, if real estate, in accordance with Subpart A of Part 1965 of this chapter.

(d) *Applicant's repayment ability.* When adequate security is not available because of the disaster, the loan approval official will accept as security such collateral as is available, if the following conditions are met:

(1) A portion or all of the security has depreciated in value *due to the disaster;* and

(2) The available security, together with the approval official's confidence in the applicant's repayment ability, is adequate to secure the loan. When considering "repayment ability" as a form of security, the reserve or margin between the balance available for debt repayment shown on the farm and home plan, and the principal and interest scheduled for payment is the "repayment ability" collateral which may be considered in loan making actions when this plan is developed for the typical year. The "typical year" plan must show that the portion of the loan secured by "repayment ability" will be paid back in a reasonable period of time, *i.e.*, the loan balance will be reduced to a fully secured loan within 3 years.

(e) *Life insurance.* If the loan approval official believes it is needed as additional security, life insurance *may* be required for the individual borrower or for the members, stockholders, partners, joint operators, of an entity borrower, listing FmHA as the beneficiary. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(f) *Security for operating type purposes.* (1) EM loans made for Subtitle B (operating) purposes will be secured by a first lien on the crop(s) and/or livestock and livestock products being financed with EM loan funds. However, if the applicant does not have sufficient equity to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken to assure that the Government's financial interest will be protected. When the applicant can provide *no* security other than a first lien on the crop(s) and/or livestock and livestock products to be produced, the amount of the loan will be limited to 75 percent of the planned gross farm income as shown on the Farm and Home Plan based on normal production and prices authorized by the State Director for developing annual farm plans within the State.

(2) The advice of OGC will be obtained on how to perfect a security interest when milk base and grazing permits are taken as security.

(3) General intangibles, accounts receivable, and contract rights may be taken as security for production loss loans made to contract feeders, tenants with share-lease arrangements, or other farmers with similar arrangements.

(g) *Security for real estate type purposes.* EM loans made for Subtitle A (real estate purposes) will be secured by a lien on real estate. However, if the applicant does not have sufficient equity in the real estate to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken.

(h) *Combination of real estate and chattel security.* When chattels are primarily relied upon as security and real estate is taken only as additional security to better protect the Government's interest, only a certification of ownership and verification of equity in real estate is required, if the applicant is an individual. Certification of ownership may be accepted in the form of a notarized affidavit from the applicant stating who is the owner of record of the real estate in question and acknowledging all known debts, with balances owed, against the real estate. Whenever the County Supervisor is uncertain of the ownership of or debts against the real estate security, and for all loans to cooperatives, corporations, partnerships, or joint operations a title search is required.

(i) *Security for personal household contents.* EM loan funds advanced for the purposes authorized in § 1945.163(c)(2) of this subpart will be secured by equity in farm machinery, livestock and/or real estate. Liens will not be taken on basic essential personal property (See § 1945.154(a)(16) of this subpart).

(j) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation; or used for other essential real estate improvements; or paid on the EM loan or on any prior real estate indebtedness, including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA.

(3) If a satisfactory contract for sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (j)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtain refinancing from another source, EM loan funds may be considered to pay off the contract.

(4) If the conditions set out in paragraphs (j) (1), (2) and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or designated attorney certifies on Form FmHA 427-10, "Final Title Opinion", or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA notice of any breach by the purchaser, and has also agreed to give FmHA the option to rectify the condition(s) which amounts to a breach within thirty days. The thirty days begin to run on the day FmHA receives written notice of the breach.

(k) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441-13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(l) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale, or otherwise, and extinguish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or will offer to assign the mortgage to FmHA for the amount of the outstanding debt owed to the prior lienholder.

(m) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of loan closing, or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of Subpart A of Part 1806 (FmHA Instruction 426.1) of this chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EM loan.

(n) *Crop insurance.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage *all* borrowers who grow insurable crops to obtain and maintain FCIC crop insurance or multi-peril crop insurance, if it is available.

(1) When EM loan funds are to be used as the primary source of financing for the ensuring year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" will be taken by FmHA, if the primary lender chooses not to do so.

(3) When EM loans are based on physical losses only, and loan funds will be used for annual production expenses the same conditions will prevail as stated in paragraph (n)(1) of this section.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, notwithstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905-12, "Monthly Expirations," of the dates which each borrowers' crop insurance premium(s) is due. This is in accordance with FmHA Instruction 1905-A, a copy of which is available in any FmHA County Office.

(5) As a result of 1988 and 1989 natural disasters affecting 1988 or 1989 crops, the Disaster Assistance Acts of 1988 and 1989 provide that all recipients of EM loans, based on 1988 or 1989 production losses, must agree to obtain multi-peril crop insurance, under the Federal Crop Insurance Act, for the 1990 crop/commodity which suffered disaster losses in 1988 or 1989, and for which the EM loan is sought. However, applicants shall not be required to obtain crop insurance for a 1990 crop/commodity when any one of the following conditions exists:

(i) Crop insurance was not available for the crop for which the loan is sought, i.e., there was no open season and no opportunity to acquire said insurance;

(ii) The applicant's annual premium rate for crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1988 or 1989 crop (depending upon which year's losses are claimed) in the county where the applicant's farming operation is located;

(iii) The annual premium costs for such crop insurance is greater than 25 percent of the amount of the EM loan sought;

(iv) The applicant's 1988 or 1989 production loss, with respect to the crop(s) for which the EM loan is made, does not exceed 65 percent. Calculations for this determination will be performed by ASCS and entered on Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," in part II, column (b). The ASCS County Office will enter all crops for which an application for disaster assistance has been filed in the disaster year for each farm unit, and enter the percent of loss after each crop listed. Any listed crop that has a loss greater than 65 percent must be insured for 1990, if it is planned to be planted. Any listed crop that does not have a loss greater than 65 percent will not have an insurance requirement, but EM borrowers should be encouraged to purchase insurance on all crops for which it is available;

(v) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance coverage would impose an undue financial hardship, i.e., the premium cost of the required insurance would prevent the applicant from projecting a positive cash flow, and thus disqualify the applicant for EM loan assistance. Each appeal to the County Committee for waiver of purchasing crop insurance for the 1990 crop(s) must be accompanied by a completed "Farm and Home Plan," Form FmHA 431-2, or comparable plan of operation for 1990, signed by the applicant and the County Supervisor. When the County Committee approves the waiver, it will be so stated on the "County Committee Certification or Recommendation," Form FmHA 440-2. If the County Committee denies the waiver, that decision will be documented on Form FmHA 440-2 and the applicant will be given full appeal rights under subpart B of part 1900 of this chapter, "Farmers Home Administration Appeal Procedure."

(6) When an applicant purchases the necessary crop insurance for 1990 as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or cause it (them) to be canceled before completion of the 1990 production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan

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made under the provisions of title I, subtitle A, section 107(d) of the Disaster Assistance Act of 1989. The loan approval official will insert this requirement in item 41 of Form FmHA 1940-1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

(o) *Indian trust lands.* EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statues under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956, (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under these conditions.

(p) *Unpatented public lands.* See Exhibit A of Subpart A of Part 1943 of this chapter for making EM loans to entrymen on unpatented public lands.

(q) *Taking security instruments.* The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this chapter (chattels and crops) and with §§ 1945.169 and 1945.189 of this subpart (real estate). The borrower must have marketable title to the property which secures the loan and FmHA must ascertain that, when the security instruments are filed, no suits are pending or threatened which would adversely affect the interest of the borrower and the Government.

(r) *Assignments and consents.* (1) The value of stock required to be purchased by the Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; and

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA loan is outstanding, or

(B) The stock refund check is made payable to the borrower and FmHA.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of Form FmHA 422-1, "Appraisal Report (Farm Tract)."

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement) and so forth, in paragraph (b)(1) of the financing statement. A form approved by OGC will be used to obtain the assignment.

(3) An assignment of income will ordinarily be taken to protect FmHA's interests.

(i) Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used for assignments of real estate security income unless that form is legally inadequate in a particular State, in which case it may be adopted with the approval of the OGC.

(ii) Form FmHA 441-8, "Assignment of Proceeds from the Sale of Products," will be used for products or income in which FmHA does not have a security interest under the UCC. Other forms approved by OGC may be used when this form is not adequate.

(iii) Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FmHA has a security interest under the UCC.

(iv) Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income, except dairy products, in which FmHA has a security interest under the UCC.

(v) Forms provided by ASCS will be used for assignments of disaster and regular agricultural program payments.

(4) In UCC states, an assignment of income constitutes a security agreement and should be treated accordingly.

[53 FR 30392, Aug. 11, 1988, as amended at 53 FR 35716, Sept. 14, 1988; 54 FR 2085, Jan. 19, 1989; 54 FR 48229, Nov. 22, 1989; 55 FR 21532, May 25, 1990]

§§ 1945.170—1945.172 [Reserved]

§ 1945.173 General provisions—compliance requirements.

(a) *Scope of operation to be financed.* Only family size farming operations may be financed with EM loans, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security, and other provisions of this subpart.

(b) *Flood or mudslide prone areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms where the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

(1) In identified special flood or mudslide prone areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and has suffered flood or mudslide losses, an EM loan may be made only if flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or SBA disaster loan; and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse; and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly.

(iii) If flood and mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan; and a condition of the loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse; the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of § 1806.25 (a) or (b) of Subpart B of Part 1806 of this chapter (paragraph V A or B of FmHA Instruction 426.2) as applicable, or be relocated outside the 100-year flood area.

(2) When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, EM loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flooding damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of Subpart G of Part 1940 of this chapter.

(c) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400-4, "Assurance Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 and Subpart G of Part 1940 of this chapter will apply.

(e) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable requirements.

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this chapter apply when EM funds are used involving tracts of less than 25 acres if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in § 1945.151(a) of this subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including its use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Program Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

§ 1945.174 [Reserved]

§ 1945.175 Options, planning and appraisals.

(a) *Optioning land.* When purchasing real property an applicant is responsible for obtaining options in accordance with the provisions contained in § 1943.25 (a) of Subpart A of Part 1943 of this chapter.

(b) *Planning.* (1) Form FmHA 431-2 or other planning forms that provide similar/necessary information, and Form FmHA 431-4, "Business Analysis-Nonagricultural Enterprise," when appropriate, will be completed as provided in subpart B of part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. The plan will show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically, this will reflect the depreciating value of machinery, equipment or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system (future advances) or, when determined necessary, through a supervised bank account.

(2) Development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. Also, the provisions of Subpart E of Part 1901 of this chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Real estate appraisals will be completed on Form FmHA 422-1, "Appraisal Report—Farm Tract", or Form FmHA 1922-8, "Uniform Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by an FmHA employee authorized to make farm appraisals, when real estate is taken as the primary security for the EM loan. The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922-11, "Appraisal Form for Mineral Rights." Appraisals are not required when:

(i) The amount of EM loan(s) plus any existing FmHA principal indebtedness is $25,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be taken as security, and

(iv) The provisions of paragraph (c)(4) of this section are applicable.

(2) Real estate appraisals will be completed as provided in FmHA Instruction 422.1 (available in any FmHA office). However, the value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals; all of which must be made a part of the file. These appraisals will show:

(i) The asset value on the day before a State Governor's, Indian Tribal Council's, or an FmHA State Director's first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or

(ii) The asset value one year (365 days) before the date set in paragraph (c)(2)(i) of this section.

(A) The following types of real estate offered as collateral for securing EM loans will be appraised at the present market value only;

(*1*) Farm real estate the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section.

(*2*) Real estate "not owned" by the applicant/borrower (for example, a relative if offering real estate as collateral for the proposed EM loan).

(*3*) A single family dwelling located on a nonfarm tract.

(*4*) Other types of real estate such as apartment houses and commercial buildings. The County Supervisor will request the assistance of the State Director in establishing the value of such real estate.

(B) Sales data utilized in the preparation of the necessary appraisals should conform to the dates set forth in paragrpah (c)(2) (i) and (ii) of this section, to ensure a fair market value of the property is established. In addition, it should be confirmed that said sales resulted from reasonable sales efforts and that both the buyer and seller were willing, informed, and knowledgeable parties.

(3) When FLB stock is to be used in establishing the Recommended Market Value (RMV) of the real estate being appraised, see § 1945.169 (r)(1) of this subpart.

(4) When real estate is taken as additional security (for loans in which the primary security is subject to rapid depreciation or is of a high risk nature, such as crops), no appraisal report will be required for the additional security, provided the County Supervisor determines the security is adequate, and records the estimated value in the running case record, shows the date the property was inspected and certifies that in his/her opinion the estimates are correct based on knowledge of the value of the comparable assets in the area.

(5) Chattel appraisals will be completed on Form FmHA 1945-15, "Value Determination Worksheet (EM Loans Only)," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made part of the file. These appraisals will be based on the same information contained in paragraphs (c)(2) (i) and (ii) of this section. Chattels not owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be apprasied at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section will be appraised at the present market value only.

(6) Abbreviated appraisals may be used and loans approved when:

(i) The loan approval official determines that the applicant's equity in the collateral will adequately secure the EM loan(s).

(ii) The abbreviated appraisals are prepared as follows:

(A) For real estate—Form FmHA 422-1, "Appraisal Report-Farm Tract," complete the heading of the report; Part 1, Item A; Part 2; Part 3; Part 6; Part 7 and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(B) For chattel property—Form FmHA 1945-15 will list, identify and show the value of each chattel item. This form will be completed, as applicable, on all EM loans.

[53 FR 30392, Aug. 11, 1988, as amended at 54 FR 8523, Mar. 1, 1989; 55 FR 21532, May 25, 1990]

§§ 1945.176—1945.179 [Reserved]

§ 1945.180 County Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440-2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations. Applications will be processed in accordance with § 1910.4(f) of Subpart A of Part 1910 of this chapter.

§ 1945.181 [Reserved]

§ 1945.182 Loan docket preparation.

(a) *Processing guide.* See Exhibit A of this subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket, the County Supervisor will fully analyze the docket to ascertain that it is complete and conforms with this EM loan regulation. The County Supervisor will reverify calculations with § 1945.183(a) and insure that the provisions of § 1945.183 of this subpart are met, before a final action is taken on the loan request.

(b) *Form FmHA 1940-1, "Request for Obligation of Funds."* A separate Form FmHA 1940-1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined under § 1945.168 (a) and (b) of this subpart. Also, the new appropriate disaster number will be shown on each Form FmHA 1940-1, for indebted EM loan borrowers having new qualifying losses from a subsequent authorized disaster.

(c) *Promissory note.* A separate promissory note will be prepared for each Form FmHA 1940-1 used in approving and obligating each of the EM loans.

(d) *Lease agreement.* Generally, copies of written lease agreements between tenant applicants and their landlords will be obtained and made a part of the loan docket. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement, which are not clearly reflected on the farm and home plan, will be prepared and made a part of the loan docket.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21532, May 25, 1990]

§ 1945.183 Loan approval or disapproval.

(a) *Reverification before approval.* Before an EM loan is approved the following actions must be taken:

(1) A County Office employee will verify information provided by ASCS on all Forms FmHA 1945-29 in accordance with the FMI. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(2) A County Office employee will verify information provided by the Federal Crop Insurance Corporation (FCIC) regarding any insurance benefits which have been paid or will be paid. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(3) All information provided by the applicant on Form FmHA 1945-22, all transcription of numbers and information from Form FmHA 1945-22 to Form FmHA 1945-26, and all calculations performed on Form FmHA 1945-26 by an FmHA County Office employee will be checked and verified for accuracy and propriety by a different County Office employee. This is to assure that any errors are detected. The verifying employee will initial and date the Form FmHA 1945-26. If any error(s) is detected, the County Supervisor or Assistant County Supervisor will make the necessary corrections; and a computer printout of the corrected Form FmHA 1945-26 will be signed and dated by the preparer and filed in the applicant's/borrower's county case file.

(4) To prevent the duplication of benefits, FmHA and SBA have agreed to coordinate their respective EM and disaster loan program activities.

(i) The FmHA County Offices will notify the approrpiate SBA Disaster Area Office of all EM disaster farm dwelling loss loan applications received each week for dwelling and/or household contents.

(ii) For dwelling and/or household content applications, FmHA County Offices will send a copy of their final action taken on each application to the appropriate SBA Disaster Area Office. Those actions include: loan approval on Form FmHA 1940-1; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on an appeal. A copy of each written communication from FmHA County Offices to the SBA Area Offices will be sent to the State Director, Attention: Chief, Farmer Programs; and the District Director.

(iii) Applicants who receive SBA physical loss loans for losses to dwellings and/or household contents may also file for FmHA EM loan assistance based on farm losses other than to dwellings. In those cases where an FmHA loan can be approved, FmHA will either reduce the FmHA EM loan by the amount of the SBA loan (which may require SBA to subordinate its lien position(s)), or refinance the SBA loan by using EM loan funds to pay SBA directly. An EM loan will *not* be approved until it is determined that the requirements of § 1945.163(e) of this subpart will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office pursuant to paragraph (a)(4)(ii) of this section.

(b) *Administrative determination and responsibilities.* When the County Committee certification has been made and the reverification has been completed, and before approving the loan, the loan approval official will determine administratively whether:

(1) The County Committee has certified, in writing, that the applicant is eligible.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound, the purposes are authorized, and the EM loan is needed.

(4) The proposed loan(s) shows a positive cash flow based upon a realistic farm and home plan.

(5) The security requirements can be met.

(6) The certification(s) required of the applicant have been made and are a part of the loan docket.

(7) The loan meets all other FmHA requirements

(8) The applicant has access to any additional financing needed to continue the farming operation. In making this determination, consideration will be given to whether the applicant qualifies for OL, FO and SW loan assistance, or for a loan(s) from other creditors with or without a FmHA subordination.

(c) *Loan docket transmittal to the Administrator.* (1) Transmittal memoranda accompanying EM loan dockets requiring National Office review/advice must set forth, as a minimum, the following information:

(i) Proposed loan(s), amount(s), rate(s), of interest, and term(s) of each loan.

(ii) Outstanding FmHA loan(s) balance(s) and the total proposed EM loan(s) indebtedness

(iii) Status of outstanding FmHA loan(s).

(iv) Brief statements regarding:

(A) Cause and type of disaster losses.

(B) Inability to obtain other suitable credit.

(C) Purposes for which loan funds are to be used.

(D) Overall feasibility and soundness of the planned operation.

(E) Property offered as security for the loan(s).

(v) The State Director's specific positive recommendation that the requested actions be approved.

(2) Loan dockets should not be forwarded to the National office for review of any action without the State Director's recommendation.

(d) *Loan approval.* (1) The loan approval official will date, sign and distribute Form FmHA 1940-1 in accordance with the FMI and set forth any special conditions of approval, including any special security requirements, in the appropriate section on Form FmHA 1940-1.

(2) The County Supervisor will complete Part III of Form FmHA 1945-29 and forward the form to the appropriate ASCS county office(s).

(e) *Loan disapproval.* The loan approval official must disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter.

(1) The County Supervisor or loan approval official will notify the applicant by letter of the reason(s) for rejection and will advise the applicant in that letter of appeal rights as set out in Subpart B of Part 1900 of this chapter. The letter will also include any suggestions that could result in favorable action.

(2) The County Supervisor will complete Part III of Form FmHA 1945-29 and forward the form to the appropriate ASCS County Office.

(3) In areas where EM loans are being made under a *major disaster declaration*, and where the FEMA has advised the State Director that Section 408 grants are available, a list of applicants with physical losses, who do not qualify for EM dwelling and/or household content loss loans, will be prepared and sent to the FEMA by County Supervisors at the close of business each week. The State Director will be advised by the FEMA where to send the list and the State Director will so advise the County Supervisors. The list will be prepared in the following format:

UNITED STATES DEPARTMENT
OF AGRICULTURE

Farmers Home Administration

TO: ________________________
____

The following is a list of applicants not qualifying for Farmers Home Administration's Emergency (EM) loans in _______ County during the week ending _______, 19___.

____
Name

Address

County Supervisor

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21532, May 25, 1990]

§ 1945.184 [Reserved]

§ 1945.185 Actions after loan approval.

Loan funds must be provided by the County Office to the applicant(s) within 15 days after loan approval, unless the conditions prescribed in § 1910.6(d) of Subpart A of Part 1910 of this chapter are applicable. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and obligation will be cancelled, the County Supervisory will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned as prescribed in FmHA Instruction 102.1 (a copy of which is available in any FmHA office).

(b) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940-10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the Finance Office.

[53 FR 30392, Aug. 11, 1988, as amended at 54 FR 39728, Sept. 28, 1989]

§§ 1945.186–1945.187 [Reserved]

§ 1945.188 Chattel lien search.

See § 1941.63 of Subpart B of Part 1941 of this chapter for regulations concerning lien searches covering chattels.

§ 1945.189 Loan closing.

(a) *Closing loans secured by real estate.*—(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1).

(2) *Security instruments.* Security instruments referred to in paragraph (a) of this section are real estate mortgages or deeds of trust.

(i) FmHA real estate mortgage or deed or trust Form FmHA 427-1 (State), "Real Estate Mortgage for ——," will be used in *all* cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the proper form as provided in Subpart A of Part 1944 of this chapter. However, all notes will be described on the same security instrument(s). When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing.

(iii) When subsequent loans are made, a new security instrument is required only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purposes may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if any one of these requirements is not met.

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

> All Borrower's rights, title, and interest in and to the leasehold estate for a term of ______ years beginning on ________, 19__, created and established by a certain lease dated ________, 19___, executed by ______, as lessor(s), recorded on ______, 19___, in Book ________, Page ______ of the ________ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(ii) An additional covenant will be inserted in the mortgage to read as follows:

> Borrowers will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) When the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. When the original is retained by the recording official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provision with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA 140-4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Field Office Terminal System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days. When

such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See Subpart B of Part 1941 of this chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

§ 1945.190 Revision of the use of EM loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided:

(1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State Supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in Table K of Form FmHA 431-2 (and, if needed, on Form FmHA 1962-1) and will be initiated by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905-1, "Management System Card—Individual."

§ 1945.191 [Reserved]

§ 1945.192 Loan servicing.

Loans will be serviced under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter.

§ 1945.193—1945.199 [Reserved]

§ 1945.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0090.

EXHIBITS TO SUBPART D

EXHIBITS A-C—[RESERVED]

EXHIBIT D—EMERGENCY LOANS FOR CITRUS GROVE REHABILITATION AND/OR REESTABLISHMENT

I. *General:* Emergency (EM) loans may be made for rehabilitation and/or reestablishment of citrus groves, in areas which are determined not to be freeze prone areas, subject to the requirements of this subpart, except as modified and supplemented herein. This exhibit shall be effective on February 22, 1985 for citrus growers who have applications pending or who file applications in the future.

A. Authority. The authorizations contained in this exhibit provide the criteria to be used in (1) determining the feasibility of a request for an EM loan to rehabilitate and/or reestablish a citrus grove(s) and (2) establishing the dollar amount of physical losses to be compensated in a single EM loan and disbursed in future advances over a period of up to 5 years.

B. Policy. It is the policy of FmHA to make EM physical loss loans to citrus growers under this exhibit, provided their citrus groves can be reestablished or rehabilitated with the EM funds advanced over a period not to exceed 5 years. If additional funds are needed and a longer recovery period is required, the applicant must plan at the outset to obtain the additional financing needed from either his/her own cash flow resources or from another lender(s), since FmHA has no authority to provide any subsequent EM physical loss loans based on the same disaster.

II. *Program Objectives:* The objective for making EM loans to rehabilitate or reestablish citrus groves is to enable eligible applicants to restore their damaged citrus groves to normal production, provided (1) the proposed citrus operation can be reestablished on a reasonably sound basis; and (2) the rehabilitated citrus grove(s) will afford long range prospects for a reasonably successful operation.

III. *Definitions:*

A. "Grove rehabilitation" means the renovation of an existing grove, made necessary because of severe damages to trees resulting from a natural or major disaster occurring in a designated/declared county(ies).

B. "Grove reestablishment" means the planting of new trees to replace those that were killed or damaged beyond economic rehabilitation, made necessary because of severe damages resulting from a natural or major disaster occurring in a designated/declared county(ies). (Both paragraphs III A and III B involve real estate development which will require more than one year to complete. Normally 3-5 years will be required for groves to become productive again under these two types of development procedures.)

C. Building new buildings, repairing existing buildings and improving chattels are *not* included in either of these definitions.

IV. *Eligibility:* Sections 1945.163 and 1945.175 of this subpart are supplemented to the extent that EM loan may be made, under the provisions of this Exhibit, only to otherwise eligible applicants who are owner-operatorsof citrus groves. To be eligible, applicants must:

A. Project, at the outset, realistic annual plans of operation for the total farming operation, showing positive cash flows. These plans will be prepared by the County Supervisor and the applicant/borrower for each year of the adjustment period, until the citrus grove(s), as projected, is brought into profitable production.

B. Provide verification of income from other farming enterprises and/or dependable off-farm income in sufficient amount to cover all family living expenses and all farm operating expenses not related to the rehabilitation or reestablishment of the citrus grove(s) to be financed by FmHA.

C. Limit their request for an EM physical loss loan to the actual physical losses sustained, which will not exceed the value of the established grove (trees and land), as appraised on the day before the disaster occurred, or one year and one day before the disaster designation was requested by a State Governor or an FmHA State Director, whichever date has the higher value, *minus* the present market value of the land and any remaining trees. The maximum EM loan limit of $500,000 per borrower for each designated disaster as prescribed in § 1945.163(d) of this subpart, will prevail.

V. *Loan Purposes:* EM loans for citrus grove rehabilitation and/or reestablishment may be made to eligible applicants for the purposes authorized by Section 1945.166 of this subpart, including the following:

A. Operating purposes. Payment of:

(1) Hired labor, not including operator's own labor.

(2) Actual cost of pruning trees and top grafting.

(3) Purchase of fertilizer, herbicides and fungicides.

(4) Actual cost of land preparation and cultivation.

(5) Machinery and equipment maintenance, repair and replacement, as needed to sustain the citrus enterprise only.

(6) Actual cost of fuel associated with the citrus enterprise. (For operation of machinery, irrigation systems, frost protection, etc.).

(7) Accrued interest on outstanding citrus operation debt.

(8) Real estate taxes and real property insurance premiums.

(9) Miscellaneous operating costs associated with the citrus enterprise.

B. Real Estate purposes. Payment of:

(1) Hired labor, not including operator's own labor.

(2) Removal of destroyed trees and debris.

(3) Land preparation.

(4) Purchase and planting of replacement trees.

(5) Secured and unsecured debts incurred during the disaster year as related to the citrus enterprise.

(6) Miscellaneous expenses directly related to long term improvement of the citrus grove(s) rehabilitation and reestablishment.

VI. *Loan Limitations:* Loan funds will *not* be approved or advanced for:

A. Family living expenses.

B. Operating or real estate expenses not directly related to the rehabilitation and/or reestablishment of the citrus grove(s) damaged or destroyed by the declared/designated disaster.

VII. *Rehabilitation and/or Reestablishment Requirements:* Citrus growers receiving EM loans under this Exhibit will rehabilitate and/or reestablish their damaged or destroyed citrus groves for production of similar type(s) citrus crops grown during the disaster year. The applicant/borrower will also agree to replant or top graft the trees, as necessary, with a variety(ies) of trees recommended by the Cooperative Extension Service. This will become a condition of loan approval and will be inserted in Item 41 of Form FmHA 1940-1, "Request for Obligation of Funds." The replacement citrus trees and any scion wood used for budding or top grafting must be "Certified," in writing, as being disease free and/or "Registered" as being true to variety by the selling nurseryman or other supplier.

VIII. *Rates and Terms:* See § 1945.168(b) and FmHA Instruction 440.1, Exhibit B (available in any FmHA office). Section 1945.168 of this subpart is hereby modified, authorizing future advances of EM loans funds to be disbursed over a period of up to 5 years, when such loan funds are used to rehabilitate and/or reestablish a citrus grove(s). EM loans may have reduced annual installments scheduled, of at least partial interest, for up to 5 years. However, such reduced installments will not be scheduled longer than the amount of time projected as being needed to bring the citrus grove(s) back into profitable production. After the adjustment period, the promissory note may describe a graduated schedule of annual installments to coincide with projected increasing cash flow. A State Supplement will be issued setting forth several examples of a 5-year adjustment period showing scheduled annual installments.

The maximum repayment period will not exceed 30 years. In cases where successive natural disaster losses severely affect the total farming operation, loans may be rescheduled with a new period of adjustment, provided subparagraphs A and B of paragraph IV of this exhibit can continue to be met.

IX. *Security Requirements:* Section 1945.169 of this subpart is hereby modified to show that the EM loans made for citrus grove rehabilitation and/or reestablishment will be secured by the following collateral and lien positions:

A. A first lien on the citrus crop being brought into production;

B. The best lien obtainable on real estate on which the citrus is to be grown, having sufficient collateral equity to fully secure the EM loan, based on the per acre appraised value of the citrus grove(s) as established on the day before the disaster occurred, or one year and one day before the disaster designation was requested by a State Governor or an FmHA State Director, whichever date has the higher value;

C. The best lien obtainable on all other assets owned by the applicant/borrower, when an individual proprietorship. When the applicant/borrower is an entity, all assets owned by the entity and the individual(s) as a member, partner or stockholder of the entity will be taken as collateral; and

D. Full personal liability of all principal members, partners or stockholders of the borrower entity.

X. *Loan Approval and Administrative Determinations:* Before an EM loan is approved under this exhibit, the loan approval official must make the determinations required by §§ 1945.182 and 1945.183 of this subpart, and the following additional determinations:

A. That postponement of loan repayment is needed to accomplish projections of positive cash flows for each year of postponement; and as necessary, repayment of the loan, except for at least an annual partial payment(s) of interest, will be postponed for up to 5 annual installments with a graduated schedule of annual installments after the adjustment period; and a maximum repayment term, as justified by realistic income and expense projections, but not in excess of 30 years from the date of promissory note, will be given.

B. That multiple future advances of loan funds are scheduled over the period of years needed to bring the citrus grove(s) into profitable production, but not in excess of 5 years.

C. That annual plans of operation and accompanying cash flow statements are scheduled for review and revision annually to reflect current circumstances, and a determination made and documented by the FmHA servicing official that recovery of the citrus operation is still feasible, before *each* future advance is disbursed.

D. That the projected annual plans show the initial and all future EM advances will be fully secured by equity in the farm real estate to be rehabilitated or reestablished, and which will serve as collateral for the EM loan, using the "as improved" appraised value.

XI. *Understandings and Agreements with Applicant:* In the event a determination is made, at any time during the recovery period, that the operation is no longer economically feasible (cannot meet its cash flow requirements), the undisbursed future advances will be cancelled by the County Supervisor after consultation with the District Director; and appropriate servicing actions will be pursued. Also, the grove rehabilitation and/or reestablishment will be considered "complete" when profitable production is achieved. If this occurs ahead of schedule, the remaining future advances will be cancelled and consideration given to rescheduling the unpaid EM loan balance. The County Supervisor may cancel a future advance(s) after consultation with the District Director and the State Director. This will be acknowledged by the borrower(s) by initialling changes in the Promissory Note, Form FmHA 1940-17, as follows: on page 1 delete the second sentence of the third paragraph from the bottom of the page which reads, "Approval by the Government will be given provided the advance is requested for a purpose authorized by the Government."; and add a footnote at the bottom of page 1 referring to page 3, where the following statement will be inserted in the blank space available. "The Government will approve advances of loan funds, which were not advanced at loan closing, provided the funds will be used for authorized purposes, the borrower has complied with all loan agreements, FmHA determines that the operation is economically feasible, and FmHA determines that FmHA loan funds are needed." Each Promissory Note thus modified will be initialled at both changes by the borrower(s) at the time of loan closing and an explanation of the implications of the changes given to the borrower(s) by the escrow agent or the FmHA official conducting the closing.

XII. *Issuance of State Supplement:* A State Supplement will be issued to provide guidance on appraising citrus groves, and projecting Farm and Home Plans or Coordinated Financial Statements during the period of grove rehabilitation and/or reestablishment. This Supplement will also contain examples of how loan installments may be scheduled during the period of adjustment. (See paragraph VIII of this exhibit.)

[50 FR 7567, Feb. 22, 1985, as amended at 50 FR 48176, Nov. 22, 1985; 51 FR 13574, Apr. 21, 1986; 53 FR 30412, Aug. 11, 1988]

PART 1946—MEDIATION

Subpart A—Agricultural Loan Mediation Program

Sec.
1946.1 General.
1946.2 Definitions.
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1946.6 Nondiscrimination.
1946.7 Environmental requirements.
1946.8 Delegation of authority.
1946.9—1946.49 [Reserved]
1946.50 OMB control number.

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

SOURCE: 53 FR 32599, Aug. 26, 1988, unless otherwise noted.

Subpart A—Agricultural Loan Mediation Program

§ 1946.1 General.

(a) This subpart provides procedures for administration of the agricultural loan mediation program whereby a State may be certified by the Farmers Home Administration (FmHA) as a qualifying State for purposes of FmHA and other USDA agencies' participation in the program. Such certification is also necessary for a State to receive Federal matching grant funds to be used for the operation and administration of the State's agricultural loan mediation program.

(b) FmHA will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally, and will cooperate in good faith in such mediations by complying with requests for information and analysis, and in presenting and exploring debt restructuring proposals, wherever feasible, when that State is and remains a qualifying State as defined in § 1946.2(b) of this subpart.

§ 1946.2 Definitions.

(a) *Agricultural Loan Mediation Program.* A State authorized or administered program which meets the requirements for certification outlined in § 1946.3(a)(2) (i) through (v) of this subpart.

(b) *Qualifying State.* A State which has been certified by FmHA as having an agricultural loan mediation program which meets the requirements outlined in § 1946.3(a)(2) (i) through (v) of this subpart, provided the State's certification has not expired or been withdrawn under the provisions of § 1946.5(c) of this subpart.

§ 1946.3 Process for certification.

(a) No later than August 1, of each year, the Governor of a State or Head of a State agency designated by the Governor of a State must submit a written request to the FmHA if the State wishes to be certified as a qualifying State for the purposes of FmHA participation in the State's program and for the State to receive a matching grant to be used for the operation and administration of the program within the State during the fiscal year commencing October 1 of that same year. The request must include:

(1) A description of the State's agricultural loan mediation program.

(2) Documentary information to support the request and a certification by the Governor or Head of a State agency designated by the Governor that the State's agricultural loan mediation program:

(i) Provides for mediation services to be provided to producers, and their creditors, that, if decisions are reached, result in mediated, mutually agreeable decisions between the parties under the program;

(ii) Is authorized or administered by an agency of the State government or by the Governor of the State;

(iii) Provides for the training of mediators;

(iv) Provides that the mediation session shall be confidential; and

(v) Ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

(b) If the State is a qualifying State at the time the written request is made, the written request need only describe the changes to the program since the previous year's request together with such documentary support as may be necessary concerning such changes, as well as a certification that the remaining elements of the program remain as described in the previous application.

(c) The request for certification should be mailed to:

Administrator, Farmers Home Administration, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Room 5014, Washington, DC 20250.

(d) If a matching grant is requested in accordance with § 1946.4 of this subpart, the request for certification also must include the information required by § 1946.4 (e)(2) of this subpart.

(e) Within 15 days from receipt of the request for certification, the Administrator will notify the State Governor or Head of a State agency designated by the governor whether or not the State is certified as a qualifying State as defined in § 1946.2(b) of this subpart, or, if additional information or clarification is needed to make the determination, the Administrator will advise the State Governor or Head of a State agency of the additional information or clarification needed. Upon receipt of the additional information or clarification requested, the Administrator will respond within 15 days from the date of receipt.

§ 1946.4 Matching grants.

(a) *Administration of grants.* FmHA will administer the program in accordance with the requirements of 7 CFR Parts 3015 and 3016. Any State requesting a grant must comply with the provisions of those regulations.

(b) *Source of funds.* All grants awarded to qualifying States will be made from appropriated funds specifically for this program. A statement of the amounts appropriated, obligated, and remaining available for the program at any particular time will be given to any person upon request to FmHA.

(c) *Amount of grant.* A grant will not exceed 50 percent of the total fiscal year funds that a qualifying State requires to operate and administer its Agricultural Loan Mediation Program which has been certified by the Administrator as meeting the requirements of § 1946.3 (a)(2) (i) through (v) of this subpart. In no case will the total amount of a grant exceed $500,000 annually.

(d) *Distribution criteria.* If funds for grants are appropriated on a fiscal year basis, funds will be obligated on a pro-rata basis to all States whose programs are certified at the beginning of the fiscal year. States certified after the beginning of the fiscal year will receive a share of funds not previously obligated. If, however, when funds for a fiscal year become available, there are not sufficient funds to give all qualified States 50 percent of their justified estimated expenses for the fiscal year, the percentage allocation to each State will be reduced so as to give all States the same percentage of their expenses. If after the percentage calculation any State's allocation still exceeds $500,000, that State's share will be further reduced to $500,000 and the remaining States' shares will be increased by the same percentage.

(e) *Eligibility criteria for amount of grant requested.* To be eligible to receive the amount of grant requested, a State must:

(1) Have an Agricultural Loan Mediation Program that has been certified by the Administrator in accordance with § 1946.3 of this subpart, which certification has not been withdrawn in accordance with § 1946.5 (c) of this subpart.

(2) Provide detailed estimates of the costs of operating and administering

the State's Agricultural Loan Mediation Program.

(f) *Grant purposes.* (1) Grants made under this subpart will be used solely for the operation and administration of the State's Agricultural Loan Mediation Program. There is no other authorized use of grant funds. Eligible costs are limited to those allowable under 7 CFR 3016.22 that are reasonable and necessary to carry out the mission of the State's Agricultural Loan Mediation Program in providing mediation services for agricultural producers and their creditors within the State, such as:

(i) Salaries of professional, technical, and clerical staffs;

(ii) Payment of necessary, reasonable office expenses such as office rental, office utilities, and office equipment rental;

(iii) Purchase of office supplies;

(iv) Payment of administrative costs, such as workers' compensation, liability insurance, employer's share of social security, and travel that is necessary to provide mediation services;

(v) Training for mediators; and

(vi) Secretary systems necessary to assure confidentiality of mediation sessions.

(2) Grant funds may not be used for:

(i) The purchase of capital assets, real estate, or vehicles or repair and maintenance of privately-owned property;

(ii) Political activities; and

(iii) Routine administrative activities not allowable under OMB Cost Principles.

(g) *Application processing.* (1) FmHA will have 60 days from the date of certifying a State as a qualifying State to review the State's application and supporting information for a grant, mail the obligation document to the responsible State Government official for signature, to obligate funds, and notify the State of approval. In any case where additional information/clarification is needed for processing a grant application, the 60-day time limit will begin on the date the additional information of clarification is received. FmHA will notify the Governor or Head of a State agency within 15 days of receipt of the application for a grant if information/clarification is needed.

(2) A State requesting a matching grant will submit to the Administrator:

(i) Standard Form 424, "Federal Assistance." The application form can be obtained from any FmHA office.

(ii) The information prescribed in paragraph (e)(2) of this section.

(h) *Grant approval.* (1) The Administrator will notify the Governor or Head of the State agency designated by the Governor of grant approval by mailing, on the obligation date, a copy of the completed Form FmHA 1940-1, "Request for Obligation of Funds." The Form FmHA 1940-1 will indicate that the grant is subject to the requirements of 7 CFR Parts 3015 and 3016, this subpart, and will cite any special grantee conditions.

(i) *Fund disbursement or grant termination or major changes.* (1) Qualifying States approved to receive matching grants under this subpart will receive payment in accordance with 7 CFR Parts 3015 and 3016.

(2) In the case of a grant reduction, termination or withdrawal of certification, in accordance with § 1946.5 (c) of this subpart, or major changes in the scope of the State's Agricultural Loan Mediation Program, the Administrator, or designee, will execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," to stop further disbursement of funds under the Grant Agreement.

(j) *Financial management systems and reporting requirements.* (1) States receiving grants must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR Parts 3015 and 3016.

(2) Qualifying States receiving matching grants must provide to the FmHA State Office by September 30 an annual report on:

(i) The effectiveness of the State's Agricultural Loan Mediation Program;

(ii) Recommendations for improving the delivery of mediation services to producers; and

(iii) The savings to the State as a result of having an Agricultural Loan Mediation Program.

(3) FmHA State Offices will include any comments or recommendations regarding the State's Agricultural Loan Mediation Program and mail the information to the Administrator no later than November 1.

§ 1946.5 Monitoring compliance and penalty for non-compliance.

(a) *FmHA monitoring.* The FmHA Assistant to the Assistant Administrator, Farmer Programs, will monitor compliance of the State's Agricultural Loan Mediation Program through the reports received in accordance with § 1946.4(j) of this subpart, through information received from FmHA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audit.* The qualifying State is subject to the audit requirements of 7 CFR Parts 3015 and 3016 of this chapter. An audit report will be submitted to the FmHA Administrator annually or biennially as applicable in accordance with OMB Circular A-128 by each qualifying State receiving a grant.

(c) *Penalty for non-compliance.* If the Administrator determines that a State's Agricultural Loan Mediation Program does not meet or no longer meets the requirements set out in § 1946.3(a)(2) (i) through (v) of this subpart for certification or, that grant funds are not being used only for the operation and administration of the State's Agricultural Loan Mediation Program, the FmHA Administrator is authorized to withdraw the certification of the program and terminate additional grant assistance and/or to impose any penalties or sanctions established in 7 CFR Parts 3015 and 3016. In the event that the penalty for non-compliance is enforced, the FmHA and other USDA agencies will cease to participate in mediations conducted by the State Agricultural Loan Mediation Program. If the penalty for noncompliance is enforced, the reason(s) will be included in a letter to the Governor or Head of the State agency along with appeal rights under Subpart B of Part 1900 of this chapter.

§ 1946.6 Nondiscrimination.

The provisions of 7 CFR 1901 Subpart E, "Civil Rights Compliance Requirements," 7 CFR Part 15, "Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture-Effectuation of Title VI of the Civil Rights Act of 1964," 7 CFR Part 15b, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," and 45 CFR Part 90, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," apply to activities financed by grants made under this subpart.

§ 1946.7 Environmental requirements.

Environmental requirements are not applicable to this subpart.

§ 1946.8 Delegation of authority.

The Administrator hereby delegates the authority for processing applications and administering grants under this subpart to the Assistant to the Assistant Administrator, Farmer Programs.

§§ 1946.9—1946.49 [Reserved]

§ 1946.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0125. In accordance with 5 CFR Part 1320, summarized below is the annualized public reporting burden for this regulation:

Section of regulations	Title	Form No. (if any)	Established number of respondents	Reports filed annually	Total annual responses (d) × (e)	Established number of manhours per response	Established total manhours (f) × (g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Reporting Requirements/No Forms							
1946.3(a)	Request for certification	NONE	15	On occasion	15	4	60
1946.3(b)	Reverification of Approval	NONE	10	On occasion	10	2	20
1946.4(e)(2)	Eligibility criteria for amount of grant requested	NONE	10	On occasion	10	2	20
1946.4(c)	Financial management systems and reporting requirements	NONE	10	1	10	8	80
1946.5(b)	Audit report	NONE	10	1	10	16	160
Reporting Requirements Approved Under Other Dockets							
1946.4(g)(2)	Application for Federal Assistance	SF 424 (0348-0006)	15	On occasion	15	2	30
Docket Total					70		370

PART 1948—RURAL DEVELOPMENT

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AUTHORITY: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—[Reserved]

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

AUTHORITY: Sec. 601, Pub. L. 95-620, delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

SOURCE: 44 FR 35984, June 19, 1979, unless otherwise noted.

§ 1948.51 General.

This subpart sets forth policies and procedures for designation, approval of designation, and making grants for assistance to areas impacted by increased coal and uranium production, processing, or transportation. The Farmers Home Administration (FmHA) will fully consider all A-95 clearing-house review comments and recommendations in selecting applications for funding.

§ 1948.52 Objectives.

The objective of the program is to help areas impacted by coal or uranium development activities by providing assistance for the development of growth management and housing plans and in developing and acquiring sites for housing and public facilities and services.

§ 1948.53 Definitions.

(a) *Approved designated area.* A group of counties, a county, or a part of a county designated as an energy impacted area by the Governor of a State and approved by the Secretary of Energy.

(b) *Available financial resources.* All existing financial resources which could be used for impact assistance including Federal, State, and local financial resources and financial resources accruing to States and local governments as a result of coal or uranium development activity and not already committed to other programs by low or historical precedent.

(c) *Coal.* Coal means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(d) *Coal or uranium development activities.* The production, processing, or transportation of coal or uranium.

(1) Production includes the mining of coal or uranium and all mine site operations connected with such mining operations and processing activities This includes construction activities on mine sites relating to mining, production, and processing.

(2) Processing includes all operations performed on coal or uranium including construction of processing plants. However, processing does not include conversion into electrical energy.

(3) Transportation which directly relates to the production and processing of coal or uranium including transportation networks in the county of origin of the coal or uranium and counties of processing of coal and uranium. This includes transportation depots along transportation networks that are used primarily for the transfer of coal or uranium for domestic consumption. This also includes unit train rolling stock construction and repair facilities.

(e) *Condemnation by U.S. Department of Agriculture (USDA).* The use of Federal authority by the Secretary of Agriculture to condemn real property.

(f) *Council of local governments.* An areawide development organization which includes one or more local governments servicing at least a portion of an approved designated area. Such organization must either have a policymaking body made up of a majority of local elected officials.

(g) *Eligible employment.* Full time work related to coal or uranium development activities.

(h) *Eligible employment facility.* A coal or uranium mine, processing plant, or transportation depot.

(i) *Energy impacted areas.* An area where coal and uranium development activities have a significant impact on the socio-economic structure of the area and which meet the criteria set out at § 1948.68 of this subpart.

(j) *Fair market value.* The price at which a property will sell in the open market allowing a reasonable period of time for typical, fully-informed buyers and sellers to react, assuming that the purchaser and seller are both willing participants in the transaction.

(k) *Grantee.* An entity with whom FmHA has entered into a grant agreement under this program.

(l) *Growth management planning.* Planning for the orderly development of an approved designated area. This planning includes, but is not limited to: Planning for provision of resources to support housing, public facility needs, sewer and water needs; planning for the provision of additional public services needed; overall plans for the coordinated development of all approved designated areas within a State; the development of State Investment Strategies for Energy Impacted Areas; and coordination of development of approved designated areas at the interstate level where impact is interstate in nature.

(m) *Housing planning.* Identification of present and future housing needs within an approved designated area and providing methods for developing needed housing. This planning includes, but is not limited to the identification of: housing sites; housing site development needs; data and resource needs; funding needs; acquisition methods; and agencies of government responsible for delivery of housing services.

(n) *Industry reports.* Those reports concerning production, expected production, and employment within an approved designated area which are requested by the Governor and submitted by a person to the Secretary of Energy.

(o) *Local government.* Any county, parish, city, town, township, village, or other general purpose political subdivision of a State with the power to levy taxes and expend Federal, State, and local funds and exercise governmental powers and which is located in, or has authority over, the energy impact area. With the concurrence of the Governor, the term may also include such school, water, sewer, highway, or other public special purpose districts or authorities, or public or private nonprofit corporations as may be appropriate to carry out the purpose for which a grant is being made. These corporations or special purpose districts or authorities may apply (including applications previously received) for grants from fiscal year 1981 and earlier fiscal year funds only.

(p) *Person.* Any corporation, individual, partnership, company, association, firm, institution, society, trust, joint venture, or joint stock company, any State or any agency or instrumentality thereof.

(q) *Public facilities.* Installations open to the public and used for the public welfare. This includes but is not limited to: hospitals, clinics, firehouses, parks, recreation areas, sewer plants, water plants, community centers, libraries, city or town halls, jailhouses, courthouses, and schoolhouses.

(r) *Public services.* The provision to the public of services such as: health care, fire and police protection, recreation, etc.

(s) *Site.* A site is a plot of land which is suitable or can be made suitable for providing housing, public facilities, or services.

(t) *Site acquisition.* Obtaining legal title to a site (or sites) or obtaining leaseholds or other interests in land, by an instrumentality of a state or local Government, or by FmHA, for housing, public facilities, or services.

(u) *Site development.* Site restoration, necessary off-site improvements and such on-site improvements as the construction of sewerage collection and water distribution lines (does not include individual taps) and construction of access roads; but does not include the construction of houses or public facilities.

(v) *Site restoration.* On-site improvements to the real property (such as backfilling, compacting, grading and leveling) necessary for the construction of houses and public facilities.

(w) *State.* Any of the fifty States, Puerto Rico, and any territory or possession of the United States.

(x) *State Investment Strategy for Energy Impacted Areas.* The investment strategy for the development of approved designated areas within a State as proposed by the Governor and approved by FmHA.

(y) *Substandard housing.* All housing units which do not have complete plumbing fixtures, lack adequate heating systems, are not structurally sound, or contain any other conditions that would cause a safety, sanitary, or health hazard to the family or community.

[44 FR 35984, June 19, 1979, as amended at 45 FR 26943, Apr. 22, 1980; 46 FR 33021, June 26, 1981]

§ 1948.54 Eligible applicants.

Organizations eligible for grants include local governments, councils of local government, and State governments that have the legal authority necessary to undertake the proposed project.

[46 FR 33022, June 26, 1981]

§ 1948.55 Source of funds.

(a) Grants will be awarded from appropriate funds specifically allocated for this program.

(b) Grants made for growth management and housing planning may equal but will not exceed 10 percent of the total amount of funds appropriated for and allocated to this program.

§ 1948.56 Program purposes.

(a) FmHA will make grants for assistance to approved designated areas in accordance with criteria contained in this subpart by providing assistance to fill gaps in growth management and housing planning, and to provide supplementary support for acquisition and development of sites for housing and public facilities and services by States, local governments, and councils of local government.

(b) Efforts will be made to provide comprehensive assistance to approved designated areas through the coordination power of the Secretary of Agriculture by utilizing existing plans, State and local programs, and other Federal programs to the maximum extent possible. Particular attention will be given to the utilization of existing FmHA authorities under other FmHA programs in conjunction with this subpart for providing assistance to approved designated areas in accordance with the Governor's approved State Investment Strategy for Energy Impacted Areas.

(c) Where existing plans are unsuitable or nonexistent, and other assistance programs are inadequate or unavailable on a timely basis, FmHA will provide assistance under this subpart to States, councils of local governments, and local governments for the modification, updating, and/or development of growth management and/or housing plans to deal with problems resulting from coal or uranium development within approved designated areas according to the criteria contained in this subpart.

(d) Where needed, FmHA will provide assistance for the development of sites and/or the acquisition of sites for housing and public facilities and services within approved designated areas according to the criteria contained in this subpart. Such assistance for site development and acquisition will be made in accordance with FmHA approved plans and State Investment Strategies for Energy Impacted Areas in accordance with the criteria contained in the subpart.

(e) At the request of the Governor of the appropriate State, FmHA will take action to acquire real property directly for sites for housing and/or public facilities and services in accordance with procedures set forth in this subpart.

(f) At the request of the Governor of the appropriate State, where neither the State nor local government has power to do so for this purpose, FmHA may take action through condemnation to acquire real property for sites necessary for housing, public facilities, or services.

§ 1948.57 Eligible activities.

Grant Funds may be used for:

(a) The preparation of growth management and/or housing plans (or aspects thereof) for which financial resources are not available for approved designated areas as set forth in the grant agreement, including but limited to:

(1) One hundred percent of the total cost of developing growth management and/or housing plans.

(2) One hundred percent of the cost of developing aspects of growth management plans and/or housing plans including but not limited to:

(i) Sewer plans;

(ii) Water plans;

(iii) Recreation plans;

(iv) Transportation plans;

(v) Education plans; and

(vi) Subdivision plans.

(3) Payment of salaries of professional, technical, and clerical staff to carry out growth management and housing planning and evaluation;

(4) Payment of necessary reasonable office expenses such as office rental, office utilities, and office equipment rental;

(5) Purchase of office supplies;

(6) Payment of necessary reasonable administrative posts, such as workmen's compensation, liability insurance, and employer's share of social security and travel; and

(7) Payment of costs to undertake tests, make appraisals, and arrange for engineering/architectural services necessary for the planning activity.

(b) Up to 75 percent of the actual cost of developing or acquiring sites for housing, public facilities, or services for which financial resources are otherwise not available as set forth in the grant agreement, including but not limited to:

(1) Necessary grading and leveling;

(2) Sewer and water connections;

(3) Necessary water and sewer lines to housing and public facilities sites;

(4) Access roads to housing and public facilities sites;

(5) Restoring previously mined sites;

(6) Necessary engineering reports in connection with site development;

(7) Payment of costs to undertake tests, make appraisals, and engineering/architectural services necessary for the site development and/or site acquisition;

(8) Necessary legal fees involved in the transfer of the real property.

§ 1948.58 [Reserved]

§ 1948.59 Ineligible activities.

(a) Growth management and housing planning grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of existing housing and public facilities;

(2) Replacement of, or substitution for, any financial support previously provided or assured from any other source which would result in a reduction of current efforts on the part of the applicant;

(3) Duplication of current services;

(4) Routine administrative activities not allowed under Federal Management Circular FMC 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(5) Planning for areas other than approved designated areas;

(6) Planning other than growth management and housing planning; or

(7) Political activities.

(b) Grant funds for site development may not be used for:

(1) Construction, repair, or rehabilitation of housing and public facilities;

(2) Replacement of, or substitution for, any financial support previously provided or assured from any other source which would result in a reduction of effort on the part of the applicant;

(3) Administrative expenses not allowed under FMC 74-4;

(4) Purposes for which funding exists under other State or Federal programs that may reasonably be obtained on a timely basis by the applicants;

(5) Duplication of current services; or

(6) Political activities.

§ 1948.60 Delegation and redelegation of authority.

The FmHA State Director is responsible for implementing the authorities contained in this subpart and may issue State supplements redelegating these authorities to appropriate FmHA employees.

§ 1948.61 State supplements and guides.

FmHA State Directors will obtain National Office clearance for all State supplements and guides in accordance with paragraph VIII of FmHA Instruction 021.2, (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this subpart as appropriate to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to designations, designation approval, or plan approvals more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for: items needed for the application; items necessary for the docket; and items required prior to grant closing or construction starts.

§ 1948.62 Environmental impact requirements.

(a) The policies and regulations contained in Subpart G of Part 1940 of this chapter apply to grants made and other actions under this program.

(b) Subsequent to an energy impact area designation by the Governor and establishment of priorities, the FmHA State Director, in consultation with the Governor, shall define the geographic boundaries or otherwise delineate the areas which will be studied for environmental impacts.

(c) Boundaries shall define the area within which the environmental impacts of the proposed action can be reasonably studied. Proper delineation of impact areas will avoid duplication of effort by using one assessment or impact statement to study a broad area rather than numerous overlapping documents prepared for smaller projects.

[44 FR 35984, June 19, 1979, as amended at 49 FR 3764, Jan. 30, 1984]

§ 1948.63 Historic preservation requirements.

The policies and regulations contained in Part 1901, Subpart F, of this chapter apply to this program.

§ 1948.64 Equal opportunity requirements.

The policies and regulations contained in Part 1901, Subpart E, of this chapter apply to grants made under this program.

§ 1948.65 Relocation Act requirements.

The policies and regulations contained in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) will apply to site development and acquisition grants and other actions under this program.

§ 1948.66 [Reserved]

§ 1948.67 Procedure for designation.

(a) Local governments may request the Governor of the State in which they are located to designate an area served by them as an energy impacted area.

(b) The Governor will define the geographic area of a designated area consistent with the nature of the impact and the socio-economic integration of the area.

(c) The Governor may designate an area as an energy impacted area based on the criteria contained in this subpart.

§ 1948.68 Criteria for designation.

(a) An area designated by the Governor must have the following characteristics:

(1) During the most recent calendar year, the eligible employment in coal or uranium development activities within the area has increased by eight percent or more from the preceding year, or such employment (as projected by generally acceptable estimates) will increase by eight percent (of the eligible employment in the year of the designation) or more per year during each of the next three calendar years.

(2) Because of increased employment in coal or uranium development activities, a shortage of housing, inadequate public facilities, or services exists or will exist in the area. Such shortages or inadequacies may be demonstrated by: Housing shortage statistics, higher occupancy rates of substandard houses than has historically occurred within the area; an increase (for which data or projected data is available) in eligible employment from the year of the designation of at least 100 workers and one-half of one percent of the designated area's population; or data showing that available public facilities and services in the area are below generally accepted standards due to the increased demand resulting from coal and uranium development activities.

(3) Available State and local financial resources are inadequate to meet the public need for housing or public facilities and services at present or in the next three years. In making this determination the Governor should consider the following:

(i) State revenue increases resulting from coal and uranium development activity based on existing tax laws;

(ii) Federal funds transferred to the State for impact assistance;

(iii) Local revenue increases resulting from coal or uranium development activities based on existing tax laws;

(iv) Other federal financial assistance to which the area may have access;

(v) All other available State and local sources of funding;

(vi) The time during which the resources will be available;

(vii) Existing laws committing increases in State and local revenues and Federal transfers to purposes other than impact assistance; and

(viii) The estimated cost of development based on the best available informed judgment.

(b) Designations submitted to the Secretary of Energy for approval must have the following attached:

(1) A list of all counties and parts of counties covered by the designation;

(2) If the area is smaller than a county, a map showing the boundary of the area and the approximate location of all eligible employment facilities in the area and nearby;

(3) A written justification for the inclusion of an area if the area is smaller than a county;

(4) The level of eligible employment within the designated area for each of the two most recent calendar years. This data should be obtained from a single source for the entire State, if possible; special surveys may be used when the Governor determines that these more accurately reflect employment conditions within the designated area, or in cases where data from other sources for the most recent calendar year is unavailable at the time of designation. Reference should be made to the data sources used if it is a Federal source; if a non-Federal sources is used, a copy of the source and a brief description of the procedures used for justification should be included. If projections of eligible employment are to be considered, projections of such employment for the next three years must be attached; identification of data sources and methodology used in developing those projections and a copy of any survey data used should be included.

(c) In areas where the impacted area covers counties or parts of counties located in more than one State, the Governors of the affected States may jointly designate such area and submit the designation to the Secretary of Energy for approval.

(d) After examining these factors and determining that the area meets the criteria of (a) above, the Governor may so certify in a letter bearing his or her signature and submit the letter of certification with all data and estimates upon which the designation is based to the Secretary of Energy for approval.

(e) Each designation submitted should have the name and phone number of a contact person in the Governor's designating office.

(f) An original and one copy of the designation should be submitted to the Secretary of Energy, Department of Energy, Mail Stop 8G-031, Forrestal Building, Washington, D.C. 20585.

(g) Two copies of all designations submitted for approval shall be submitted to the appropriate FmHA State Director. The FmHA State Director shall forward one copy to the Office of Area Development Assistance in the FmHA National Office.

(h) The Governor should designate all areas expected to be considered in fiscal year 1979 allocations of funds before July 1, 1979.

[44 FR 35984, June 19, 1979, as amended at 46 FR 33022, June 26, 1981]

§ 1948.69 [Reserved]

§ 1948.70 Designation approval.

Upon receipt of a request for approval of a designation made under this section, the Secretary of Energy shall:

(a) Determine to the best of his ability the consistency of the supporting data submitted along with the designation by the Governor;

(b) Confer with FmHA on approval;

(c) Notify the Governor and the Administrator of FmHA of action taken on each designation within 30 calendar days of the receipt of a request for approval;

(d) Consult with the Governor before the disapproval of any designation; and

(e) Publish a description in the FEDERAL REGISTER of all designated areas approved within 30 days of their approval.

§ 1948.71 [Reserved]

§ 1948.72 Industry reports.

Any person regularly engaged in any coal or uranium development activity within an area designated and approved in accordance with this subpart, shall prepare and transmit a report to the Secretary of Energy, Department of Energy, Mail Stop 8G-031, Forrestal Building, Washington, D.C. 20585 within 90 days after a written request to such person by the Governor of the State in which such area is located.

(a) The report shall contain:

(1) Projected levels of employment in coal or uranium development activities within the approved designated area for the next three calendar years;

(2) The projected number of new jobs to be created in coal or uranium development activities by the person within the approved designated area in each of the following three calendar years;

(3) Current or planned actions of the person in relation to the provision of housing or public facilities for such person's employees in the next three calendar years;

(4) Contracts in force whereby the person intends to provide funds to State government, local governments, and public or private nonprofit organizations for the provision of housing or public facilities for such person's employees; and

(5) The projected quantity of coal or uranium to be produced, processed, or transported by the person in each of the next three years.

(b) The Governor requesting the report will notify the Secretary of Energy of persons from whom reports have been requested.

(c) The Secretary of Energy shall provide a copy of these reports to the Secretary of Agriculture, the appropriate Governor, and the appropriate county or local officials, and make it available for public inspection and copying in the public reading room of the Department of Energy, Room GA152, Forrestal Building, Washington, D.C. 20585.

§§ 1948.73—1948.77 [Reserved]

§ 1948.78 Growth management and housing planning projects.

(a) Existing plans for growth management and housing may be used to meet the planning requirements of this subpart.

(b) A reasonable effort should be made to modify existing plans for use in meeting the planning requirements of this section.

(c) The Governor shall be responsible for the coordination of planning within a State.

(d) The planning process developed with assistance under this section should begin at the local level and flow upward to the State.

(e) Planning processes developed with assistance under this section should have the maximum possible citizen involvement in the development of plans.

(f) Governors should give full consideration to local and substate priorities in the development of the State Investment Strategy for Energy Impacted Areas.

(g) Plans developed with assistance under this section should be fully coordinated with other Federal, State, substate, and local planning activities affected by the project.

(h) Planning conducted by the State include effective management activities for coordinated development of approved designated areas through the plan implementation stage.

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983]

§ 1948.79 Application procedure for planning grants.

(a) Applicants may submit a preapplication for a planning grant upon designation of the area as an energy impacted area by the Governor. FmHA will not take final action on the preapplication until the designation has been approved by the Secretary of Energy.

(b) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture office."

(c) Applicants shall file an original and one copy of SF 424.1, "Application for Federal Assistance (For Non-construction)," with the appropriate FmHA office. A copy should also be filed with the Governor's office of the appropriate State. This form is available in all FmHA offices. Local governments and councils of local governments shall submit preapplications to the appropriate FmHA District Office. State governments shall apply to the appropriate FmHA State Office. The FmHA District Office will forward the preapplication with written comments within 10 working days to the appropriate State Office.

(d) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence;

(2) Evidence of applicant's authority to prepare growth management and/or housing plans;

(3) A statement declaring that the planning neither duplicates nor conflicts with current activities;

(4) An original and one copy of Forms FmHA 400-1, "Equal Opportunity Agreement," and Form FmHA 400-4, "Assurance Agreement;" and

(5) A statement regarding other financial resources available to the area for this planning.

(e) District and State FmHA Offices receiving preapplications will:

(1) Determine if the area to be covered by this project is an "approved designated area" as defined in this subpart;

(2) Comply with the environmental requirements set forth in this subpart; and

(3) Prepare a Historic Preservation Assessment in accordance with Part 1901, Subpart F, of this chapter.

(f) District FmHA Offices receiving preapplications will also provide written comments reflecting planning grant selection criteria listed in this subpart.

(g) The FmHA District Office will forward the original of the preapplication and accompanying documents including those described in paragraphs (e)(1) through (e)(3) and (f) of this section to the appropriate FmHA State Director within 10 working days of receipt of the preapplication.

(h) Upon receipt of a preapplication, the FmHA State Office will:

(1) Review and evaluate the preapplication and accompanying documents;

(2) Consult with the Governor of the appropriate State concerning the Governor's priorities and recommended funding level for the project; and

(3) Respond to the applicant within 30 days of the date of receipt of the preapplication using Form AD-622, "Notice of Preapplication Review Action," indicating the action taken on the preapplication.

(i) Upon notification that the applicant is eligible to compete with other applicants for funding, a SF 424.1 may be submitted to the FmHA State Office by all applicants.

(j) The FmHA State Office will send evidence of the applicant's legal existence and authority to the USDA Regional Office of General Counsel (OGC) and request that a legal determination be made of the applicant's legal existence and authority to prepare growth management and/or housing plans in those cases where an application (SF 424.1) is requested.

(k) Upon receipt of an application on SF 424.1 by the FmHA State Office, a docket will be prepared which will include the following:

(1) Form SF 424.1;

(2) Form AD-622;

(3) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940-J, available in any FmHA office.

(4) SF 424.1;

(5) Evidence of the applicant's legal existence and authority to prepare growth management and/or housing plans;

(6) OGC legal determinations;

(7) Grant agreement and scope of work;

(8) Form FmHA 440-1, "Request for Obligation of Funds;"

(9) Form FmHA 400-1;

(10) Form FmHA 400-4;

(11) Historic Preservation Assessment;

(12) District, where appropriate, and State FmHA written comments, assessments, and analysis of the pro-

posed projects in accordance with the grant selection criteria; and

(13) All certificates and statements accompanying the pre-application and/or application.

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3764, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990

§ 1948.80 Planning grant selection criteria.

The following criteria will be used in the selection of planning grant recipients:

(a) Planning assistance which could be used for the purpose of the proposed planning process is not available from other sources on a timely basis (Mandatory);

(b) The increase in the number of new employees and the percentage of increase in employment in coal and/or uranium development activities in the year of designation within the approved designated area (years projected will be averaged and treated equally);

(c) The need for planning in relation to the financial resources available for such planning;

(d) The planning priorities and recommended funding level of the Governor(s) of the appropriate State(s);

(e) The appropriateness of the proposed planning activity for meeting the planning needs of the area, including but not limited to the building of planning capacity and the local priority for the project;

(f) The inadequacy of existing plans for mitigating the effects of coal and/or uranium development activities; and

(g) The nature of comments and recommendation received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" (See FmHA Instruction 1940-J, available in any FmHA office.

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983]

§ 1948.81 State Investment Strategy for Energy Impacted Areas.

(a) The State Investment Strategy for Energy Impacted Areas should be a dynamic document updated as each plan or group of plans is submitted to FmHA for approval.

(b) The Governor shall consult with the FmHA State Director when developing or updating a State Investment Strategy for Energy Impacted Areas.

(c) The State Investment Strategy for Energy Impacted Areas will include but is not limited to:

(1) A list of projects in order of priority;

(2) The Governor's recommended level of and method of funding for each project through completion of the project identified in the plans submitted and incorporated into the State Investment Strategy for Energy Impacted Areas;

(3) Methods of coordinating assistance with other State and Federal development programs;

(4) The differential between available financial resources and the cost of needed site development and acquisition for housing and public facilities and services within the area covered by the State Investment Strategy for Energy Impacted Areas;

(5) References to plan and page number of plan on which each priority project is described.

(d) The State Investment Strategy for Energy Impacted Areas having projects expected to be funded in FY 1979 should be submitted to the FmHA State Director of the appropriate State before July 15, 1979. A copy should also be forwarded to the Administrator, FmHA.

§ 1948.82 Plan and State Investment Strategy approval procedure.

(a) Any plan submitted for FmHA approval, whether it is a plan developed with assistance under this section, an existing plan, or a modified plan, should contain:

(1) The present level of coal or uranium production, processing, or transportation within the approved designated area covered by the plan;

(2) The anticipated level of coal or uranium production, processing, or transportation in each of the next three calendar years within the area covered by the plan;

(3) A brief description of the socio-economic impacts that have occurred during the two most recent calendar years in the approved designated area covered by the plan;

(4) A brief description of the socio-economic impacts that are expected to occur in the approved designated area covered by the plan within each of the next three calendar years;

(5) The anticipated number of new employees expected to be hired in coal or uranium development activities in each of the next three years within the approved designated area covered by the plan;

(6) Available financial resources and federal programs that may be applied to meeting the needs of the approved designated area including but not limited to the following:

(i) The expected amount of State assistance and State expenditures in the approved designated area covered by the plan which will be used for impact assistance in the next three years;

(ii) The amount of tax revenues expected to accrue to local governments serving the approved designated area covered by the plan in each of the next three years due to increased economic activities which have occurred since the year prior to designation or are expected to occur as a result of coal and uranium development activity;

(iii) Sources and amount of assistance State and local governments are now receiving or are expected to receive from persons for the provision of housing and public facility and services; and

(iv) Existing budget surplus at the State and local level.

(7) The specific needs of the area covered by the plan as to the number of housing units now needed and the number that are expected to be needed in each of the next three years, and/or the number and type of public facilities and services now needed or expected to be needed in the next three years;

(8) The type and quantity of real property now needed or expected to be needed in the next three years for the construction of public facilities and/or housing and/or in the provisions of public services;

(9) Proposed method of acquisition for each site to be acquired by the State or local governments; and

(10) An estimate of assistance that will be necessary under this section and/or other FmHA or Federal programs for the development of the site.

(b) All plans meeting the criteria in paragraph (a) of this section should be forwarded to the Governor of the appropriate State or States for possible incorporation into the State Investment Strategy for Energy Impacted Areas.

(c) Appropriate growth management and/or housing plans received by the Governor under this section may be submitted to the appropriate FmHA State Office by the Governor.

(d) The Governor shall submit a copy of the State Investment Strategy for Energy Impacted Areas along with all plans the Governor is submitting to FmHA for approval.

(e) During fiscal year 1979 the Governor may submit existing plans to FmHA for qualified approval in which some sections under paragraph (a) above are incomplete, provided that planning is presently being done to fill these gaps, or application for a planning grant has been submitted or is to be submitted to cover the cost of the needed planning. These plans must be resubmitted for final approval on or before December 31, 1980. No requested grant will be approved for land acquisition or site development unless the request is cited in the FmHA-approved comprehensive growth management plan for the designated area in which the project is located.

(f) The FmHA State Director shall review all plans and the State Investment Strategy for Energy Impacted Areas and provide comments on the following:

(1) Appropriateness of FmHA assistance under this section as called for in the plans;

(2) Appropriateness of FmHA assistance under other programs as called for in the plans;

(3) Appropriateness of the State Investment Strategy for Energy Impacted Areas;

(4) Other Federal programs which could be used instead of, or in addition to, assistance under this section; and

(5) Recommended action.

(g) The FmHA State Director shall submit all plans received from the Governor, the State Investment Strategy Energy Impacted Areas, and any comments to the FmHA National Office for approval within 10 days of the submission of plans and the State Investment Strategies for Energy Impacted Areas to the State Director.

(h) The FmHA National Office shall review all plans and State Investment Strategy for Energy Impacted Areas received and approve or return them for modification within 30 days of their receipt in the FmHA National Office.

(i) The FmHA National Office shall notify the appropriate State Director of all plans that have been approved by the Administrator.

(j) Upon approval of the plans and State Investment Strategies for Energy Impacted Areas by the Administrator, FmHA, the FmHA State Director may exercise the authority of the Secretary of Agriculture under Section 603 of the Rural Development Act of 1972 to convene a meeting of the appropriate representatives of all Federal and State agencies which are requested to supply development funds by the State Investment Strategy for Energy Impacted Areas for the purpose of obtaining tentative funding commitments consistent with their authorities.

(k) The FmHA State Office shall notify the Governor and the appropriate District Directors of all plans approved by the Administrator, FmHA.

(l) Modifications to approved plans shall be approved by the Administrator of FmHA following the above procedure.

(m) The Governor's modification to the State Investment Strategy for Energy Impacted Areas may be approved by the FmHA State Director provided the modification is consistent with FmHA approved plans.

§ 1948.83 Performance of site development work.

Site development work will be done in accordance with § 1942.18 of FmHA Instruction 1942-A.

§ 1948.84 Application procedure for site development and acquisition grants.

(a) For those projects for which Federal funding is sought in excess of $100,000 the applicant shall file SF 424.2, "Application for Federal Assistance (For Construction)" with the appropriate FmHA office. For those projects for which Federal funding is sought for less than $100,000, the applicant shall file SF 424.2 with the appropriate FmHA office. A copy should also be filed with the Governor's office of the appropriate State.

(b) The FmHA office receiving a SF 424.2 shall reply to the applicant within 45 calendar days regarding the applicant's eligibility to compete for funding under this program using Form AD-622. (FmHA District offices will send each preapplication to the FmHA State Offices for review before replying to the applicant. FmHA District offices will send a copy of Form AD-622 to the FmHA State Office at the time the AD-622 is sent to the applicant.)

(c) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940-J, available in any FmHA office.

(d) Applicants shall file an original and one copy of SF 424.2, with the appropriate FmHA office. Local governments and councils of local government shall submit applications to the FmHA District Office and State governments to the FmHA State Office. Applications shall include:

(1) Evidence of applicant's legal existence and authority to undertake the proposed project;

(2) Evidence of ownership of or lease on a site to be developed or "Options to Purchase Real Property," Form FmHA 440-34, (Lease on a site for a public facility will be in accordance with FmHA Instruction 1942-A and lease on a site for housing will be in accordance with Part 1944, Subpart A);

(3) Description of project and relationship to approved growth management and housing plan. Applicant

must cite pages and section of the approved plan;

(4) A plat of the area including elevations;

(5) Preliminary plans and specifications on proposed development which will contain an estimate of the projected cost of site development prepared by independent qualified appraisers or architects/engineers;

(6) The amount of Federal grant needed;

(7) The amount and source of applicant's financial contribution to the project;

(8) An original and one copy of Form FmHA 1940-20;

(9) An original and one copy of Forms FmHA 400-1 and Form FmHA 400-4;

(10) Evidence that the land is stable if the land has been previously mined (include relevant data on soil and analysis);

(11) Assurance that the requirements set forth in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) have been met.

(12) Specific concurrence of the Governor if the proposed applicant is neither a council of local governments nor a general purpose political subdivision of a State;

(e) District and State FmHA Offices receiving applications shall:

(1) Determine if the project is in accordance with a FmHA approved growth management and/or housing plan covering the approved designated area;

(2) Comply with environmental requirements set forth in Subpart G of Part 1940 of this chapter;

(3) Prepare a Historic Preservation Assessment in accordance with Part 1901, Subpart F, of this chapter;

(4) Determine site stability if the land has been previously mined; and

(f) District FmHA Offices receiving applications shall also provide written comments reflecting site development and acquisition grant selection criteria (§ 1948.86) listed in this subpart.

(g) The FmHA District Office shall forward the original of the application and accompanying documents including those required in paragraph (e) of this section to the FmHA State Director within 10 working days of receipt of the application.

(h) Upon receipt of an application, the FmHA State Office shall:

(1) Review and evaluate the application and accompanying documents;

(2) Determine that the project is a part of and consistent with the State Investment Strategy for Energy Impacted Areas;

(3) Send a copy of the applicant's evidence of legal existence and authority to the USDA Regional OGC for review;

(4) If applicant is local government(s), consult with the Governor on funding recommendation of the project; and

(5) Respond to the applicant within 30 days of the date of receipt of the application.

(i) Upon receipt of an application by the FmHA State Office, a docket shall be prepared which shall include the following:

(1) Application SF 424.2 and enclosures;

(2) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940-J, available in any FmHA office.

(3) Evidence of ownership or lease of site to be developed;

(4) Evidence of applicant's legal existence and authority;

(5) OGC legal determination;

(6) Preliminary plans and specifications concerning the proposed development;

(7) Grant agreement and scope of work;

(8) An estimate of projected cost of site development prepared by independent qualified appraisers or engineers/architects;

(9) A topographical map of the area;

(10) Form FmHA 440-1;

(11) Form FmHA 400-1;

(12) Form FmHA 400;

(13) Form FmHA 1940-20, if required by Subpart G of Part 1940 of this chapter;

(14) A copy of the appropriate FmHA environmental review required by Subpart G of Part 1940 of this chapter;

(15) Historic Preservation Assessment;

(16) A copy of the State Investment for Energy Areas; and

(17) District, where appropriate, and State FmHA written comments, assessments and analysis of the proposed project in accordance with the grant selection criteria.

[44 FR 35984, June 19, 1979, as amended at 46 FR 61991, Dec. 21, 1981; 48 FR 29121, June 24, 1983; 49 FR 3764, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990]

§ 1948.85 [Reserved]

§ 1948.86 Site development and acquisition grant selection criteria.

The following criteria will be considered in the selection of site development and/or acquisition grant recipients:

(a) *Required criteria.* Each project must meet the following criteria:

(1) The area is covered by a FmHA approved plan;

(2) The FmHA approved plan specifically calls for the site development and/or acquisition;

(3) Other Federal funds that the community could receive for the project are inadequate or not available, and no State or local funds for site development are available to permit development on a timely basis;

(4) The site is to be developed and/or acquired and is to be used for housing, public facilities, or services;

(5) The applicant has title to the site, lease on site, or an option on the site and funds to purchase the site, or is applying for site acquisition funds;

(6) The site will comply with Executive Orders 11988, "Flood Plain Management" and 11990, "Protection of Wetlands;"

(7) An appraisal of the fair market value of the site must have been completed;

(8) Priority has been given in the selection of site to unoccupied or previously mined land;

(9) Class I or Class II farm land was included in the site only if other suitable land was not available;

(10) The land is stable if previously mined; and

(11) Assurance that the requirements set forth in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) have been met.

(b) *Competitive criteria.* The following criteria will be considered in the selection of grantees:

(1) Priority assigned and recommended funding level by the Governor in the State Investment Strategy for Energy Impacted Areas;

(2) The increase in the number of new employees and the percentage of increase in employment in coal and/or uranium development activities in the year of designation within the approved designated area (years projected will be averaged and treated equally);

(3) The severity of need for housing, public facilities, services that has resulted from coal or uranium development activities in relation to available financial resources within the approved designated area covered by the plan calling for the project;

(4) Local priority for the project;

(5) The amount of effort by State and local government to meet the needs of the area covered by the application as called for in the State Investment Strategy for Energy Impacted Areas in relation to available financial resources;

(6) An assessment of the environmental impacts of the project; and

(7) The nature of comments and recommendations of A-95 clearinghouse(s).

§ 1948.87 [Reserved]

§ 1948.88 Direct land acquisition by FmHA.

(a) FmHA may take action to acquire real property directly upon the written request of the Governor of the State in which the real property is located. FmHA will not acquire real property directly under this section without such a request.

(b) All requests for direct land acquisition should be submitted to the FmHA State Director. The following conditions must be met prior to the submission of a request for direct acquisition by FmHA:

(1) The State or local government serving the area must lack power to condemn land of this type for this purpose and must supply an opinion by the State Attorney General that this authority is lacking;

(2) The real property is to be used as a site for needed housing, public facilities, or services;

(3) The site acquisition is called for in a FmHA approved plan;

(4) The site is specifically identified by a FmHA approved plan;

(5) State and local governments have been unable to obtain the real property for a price which does not substantially exceed its fair market value; and suitable alternate sites are not available;

(6) The land is not Indian Trust land;

(7) The land is not U.S. Forest Service land; and

(8) There is legal authority to undertake the proposed project.

(c) FmHA may acquire Federal real property not prohibited in paragraphs (b) (6) and (7) of this section for purposes contained in this subpart. Farm land (Class I and II) will not be considered unless there is no other suitable land available.

(d) If the State Director determines that no other suitable real property exists that can be obtained at a price which does not substantially exceed its fair market value, and if the appropriate State or local government lacks condemnation authority as evidenced by opinion from the Attorney General, and there is authority to undertake the proposed project, then the State Director shall follow the procedures set out in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) and immediately open negotiations to directly acquire the real property through purchase or trade.

(e) The FmHA State Director may acquire real property by purchase to trade for other real property when FmHA has been requested to acquire real property by the Governor of the State in which the real property is located.

(f) The Governor shall submit, with this request, a commitment from the State to acquire real property, together with a plan of compensation to FmHA and evidence of the State's legal authority to enter into this agreement with FmHA to accept the real property and repay FmHA for the fair market value of the real property for the intended purpose.

(g) Real property acquired by FmHA shall be transferred to the State requesting by a quitclaim deed for a price equal to the fair market value in accordance with the terms of a transfer agreement.

(h) After obtaining title to the real property and prior to transfer to the State, the property shall be managed by FmHA in accordance with Part 1955, Subpart B of this chapter.

(i) The State Director shall inform the Governor that FmHA real property acquisition is not likely to occur by purchase or trade if negotiations have failed to produce acceptable results within 90 days of the request for FmHA acquisition of real property.

§ 1948.89 Land condemnation by FmHA.

(a) If FmHA attempts to acquire real property at the request of a Governor through purchase or trade and is unable to do so, FmHA may take action to condemn the real property by the following procedures:

(1) A request for condemnation shall be submitted by the FmHA State Director to the Administrator, FmHA, Washington, D.C. 20250 at the request of the Governor of the appropriate State. A copy of the Governor's request for FmHA real property condemnation and the State Attorney General's opinion that State and local government condemnation authority is lacking shall be attached to the FmHA State Director's request.

(2) The Administrator shall forward all requests for Federal condemnation to the OGC, USDA with a recommendation for action.

(3) The Administrator, FmHA shall inform the Governor of any action on the request for condemnation.

(4) Real property condemned by FmHA shall be transferred to the requesting State by a quitclaim Deed for

a price equal to the fair market value of the real property in accordance with terms of a negotiated real property transfer agreement.

(5) After obtaining title to real property and prior to transfer to the State, the property shall be managed by FmHA in accordance with Part 1955, Subpart B of this chapter.

(b) FmHA may not condemn Indian Trust Land or U.S. Forest Service Land.

§ 1948.90 Land transfers.

(a) Transfers of real property acquired by FmHA.

(1) A request for FmHA acquisition of real property by a Governor of a State constitutes an agreement by that State to receive said real property and to reimburse FmHA for the fair market value of said real property for the intended use.

(2) Terms and conditions, including reimbursement terms, for real property transfers shall be set forth in a Real Property Transfer Agreement between the Administrator, FmHA and the appropriate Governor. These terms and conditions will be agreed upon by FmHA and the State prior to FmHA attempting to acquire the property. These agreements shall be prepared after consulting with OGC, and forwarded for prior approval by the FmHA National Office.

(3) All funds from real property transfers received by FmHA shall be deposited in the U.S. Treasury.

(b) Transfer of real property acquired and/or developed with grant funds from a grant made under this subpart to a person.

(1) Real property acquired and/or developed under this subpart may be transferred to a person for the purposes of construction of privately-owned housing.

(2) All transfers of real property to a person must be approved by the FmHA State Director of the appropriate State.

(3) Transfer of real property by a recipient of assistance under this subpart to a person must be by contract which: acknowledges the use of funds provided under this subpart to acquire or develop the site; specifies the date of performance prior to delivery of the deed; provides for FmHA concurrence before changes or modifications; and assures FmHA that the real property will be used for the purposes under which the grant was made.

(4) Proceeds derived from the sale of land acquired or developed through the use of a grant provided under this subpart must be divided between the grantee and FmHA on a pro rata basis. A grantee may not recover its costs from sale proceeds to the exclusion of FmHA. The amount to be returned to FmHA is to be computed by applying the percentage of FmHA grant participation in the total cost of the project to the proceeds from the sale. Funds will be transmitted to the Finance Office in accordance with FmHA Instruction 1951-B, § 1951.58(j), available in FmHA offices.

(5) All funds received by FmHA from real property transfers shall be deposited in the U.S. Treasury.

(42 U.S.C. 8401; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[44 FR 35984, June 19, 1979, as amended at 46 FR 33022, June 26, 1981]

§ 1948.91 Inspections of development.

Inspections will be made by the FmHA State Engineer or other employee designated by the FmHA State Director to ascertain whether site development is proceeding in accordance with plans and specifications. Such inspections are solely for the benefit of the Government and not for the benefit of the Grantee or any other person.

§ 1948.92 Grant approval and fund obligation.

(a) The FmHA State Office shall review the docket to determine whether the proposed grant complies with this subpart and that funds are available.

(b) The FmHA State Director shall be the approving officer on all grants made under this subpart.

(c) If at any time prior to grant approval it is decided that favorable action will not be taken on a preapplication or application, the FmHA State Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with FmHA Instruction 1900-B.

(d) If a grant is recommended, Form FmHA 440-1 and the proposed grant agreement and scope of work will be prepared and forwarded to the applicant for signature.

(e) When Form FmHA 440-1 and the grant agreement and scope of work are received by the applicant, the applicant will sign these documents and forward them to the State Director.

(f) Exhibit A to FmHA Instruction 2015-C (available in any FmHA Office) will be prepared by the State Director and sent to the Director of Information, Farmers Home Administration.

(g) If the State Director approves the project, the following actions will be taken in the order listed:

(1) The State Director, or a designee, will telephone the Finance Office requesting that grant funds for a particular project be obligated. Immediately after contacting the Finance Office, the requesting official shall furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request of obligation. After the security code is furnished, the required information from Form FmHA 440-1 shall be furnished to the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office shall record all information necessary to process the request for obligation in addition to the date and time of request.

(2) The individual making the request shall record the date and time of the request.

(3) The Finance Office will notify the FmHA State Office by telephone when funds are reserved and the date the funds will be obligated. If funds cannot be reserved for a project, the Finance Office will notify the FmHA State Office that funds are not available. The obligation date will be six working days from the date the request for obligation is processed.

(4) The Finance Office will send Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," to the FmHA State Director, informing the State Director of the reservation of funds with the obligation date inserted as required by Item 9 on the Forms Manual Insert (FMI) for Form FmHA 440-57.

(5) Form FmHA 440-1 will not be mailed to the Finance Office.

(6) A copy of Form FmHA 440-1 will be sent the FmHA National Office.

(7) The State Director shall notify the Director of Information in the FmHA National Office with a recommendation that the project announcement be released.

(8) An executed copy of Form FmHA 440-1 shall be sent to the applicant along with an executed copy of the grant agreement and scope of work on or before the date funds are obligated.

(9) The actual date of applicant notification will be entered on the original of Form FmHA 440-1 and the original of the form will be included as a permanent part of the file.

(10) For planning grants, Standard Form 270, "Request for Advance or Reimbursement," will be sent to the applicant for completion and return to FmHA. For site acquisition and site development grants, Standard Form 271, "Outlay Report and Request for Reimbursement for Construction Programs," will be sent to the applicant for completion and returned to FmHA.

(11) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the FmHA State Director will notify the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement that the project will not be funded or of major changes in the project using a procedure similar to the announcement process. Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director, LAPIS.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93-357; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

[44 FR 35984, June 19, 1979, as amended at 47 FR 36416, Aug. 20, 1982; 48 FR 30946, July 6, 1983]

§ 1948.93 Appeal procedure.

Any grantee or applicant for FmHA assistance under this subpart who has been directly and adversely affected by an administrative decision by FmHA may appeal such decision in accordance with FmHA Instruction 1900-B.

§ 1948.94 Reporting requirements.

(a) For planning grants, SF-270 shall be submitted by grantees on an as-needed basis but not more frequently that once every 30 days. SF-269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis. SF-269 and a final project performance report will also be required. These final reports may serve as the last quarterly reports. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All grantees except States should submit an original of each report and one copy to the appropriate FmHA District Office. When the grantee is a State, an original should be submitted to the appropriate FmHA State Office. The project performance reports shall include, but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation; and

(4) Objectives established for the next reporting period.

(b) For site development and land acquisition grants, grantees shall submit Form SF-271 for payment of site development costs. Multiple advances will be made in accordance with FmHA Instruction 402.1 (available in any FmHA office) and will be made as needed to cover required disbursements for not less than 30 day periods. Advances will be requested for the next 30 day period by the grantee on Form SF-272, "Report of Federal Cash Transactions." Each payment estimate must be approved by the grantee. A final Form SF-272 will be submitted to FmHA to include the final advance not later than 90 days after the final advance.

§ 1948.95 Grant monitoring.

Each grant will be monitored by FmHA to ensure that the Grantee is complying with the terms of the grant and that the project activities are completed as approved. This will involve on-site visits to the project area and review of quarterly and final reports by FmHA .

§ 1948.96 Audit requirements.

(a) Audit requirements for Site Development and Acquisition Grants will be made in accordance with FmHA Instruction 1942-G.

(b) Audits for planning grants made in accordance with State statutes or regulatory agencies will be acceptable provided they are prepared in sufficient detail to permit FmHA to determine that grant funds have been used in compliance with the proposal, any applicable laws and regulations, and the grant agreement. A copy of the audit shall be submitted to the State Director as soon as possible but in no case later than 90 days following the period covered by the grant.

§ 1948.97 Grant closing and fund disbursement.

Grant closing and fund disbursement will be accomplished in accordance with FmHA Instruction 1942-G.

§ 1948.98 Grant agreements.

The following Grant Agreements are a part of this regulation.

(a) Exhibit A of this subpart is a Grant Agreement for Growth Management and Housing Planning Grants for approved Designated Energy Impacted Areas.

(b) Exhibit B of this subpart is a Grant Agreement for Site Development and/or Site Acquisition for Housing and/or Public Facilities and/or Services.

§§ 1948.99—1948.100 [Reserved]

Subpart C—Intermediary Relending Program (IRP)

Source: 53 FR 30647, Aug. 15, 1988, unless otherwise noted.

§ 1948.101 Introduction.

(a) This subpart contains regulations for loans made by the Farmers Home Administration (FmHA) to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with Subpart R of Part 1951 of this Chapter.

(b) The purpose of the program is to finance business facilities and community development projects in rural areas. This purpose is achieved through loans made by FmHA to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development in a rural area.

(c) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for processing activities unless otherwise delegated by the Administrator.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38532, Sept. 19, 1990]

§ 1948.102 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Applicant.* The intermediary applying to FmHA for loan funds for relending to ultimate recipients for business facilities and community development in a rural area.

(2) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients pursuant to FmHA requirements found in § 1948.103.

(3) *Letter of Conditions.* FmHA's letter of proposed terms and conditions to the intermediary which when accepted by the intermediary provides the binding conditions under which FmHA will make a loan to the intermediary.

(4) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(5) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(6) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(7) *Principals of intermediary.* Include members, officers, directors, entities, and other entities directly involved in the operation and management of an intermediary organization.

(8) *Ultimate recipient.* The entity or individual receiving financial assistance from the intermediary.

(9) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(10) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(12) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total

enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(13) *Intermediary Relending Program (IRP).* A program operated by an intermediary whereby the intermediary uses loan funds received from FmHA, along with any other available funds, to make loans to ultimate recipients. Relending programs will normally establish revolving funds so that income from loans made to ultimate recipients, in excess of necessary operating expenses and debt payments, will be used to make additional loans to ultimate recipients.

(b) *Abbreviations.* The following abbreviations are applicable to this subpart:

(1) *B&I*—Business and Industry
(2) *FmHA*—Farmers Home Administration
(3) *IRP*—Intermediary Relending Program
(4) *OGC*—Office of the General Counsel
(5) *OIG*—Office of Inspector General
(6) *RDLF*—Rural Development Loan Fund
(7) *USDA*—United States Department of Agriculture

§ 1948.103 Eligibility requirements.

(a) The intermediaries which may receive FmHA loan funds for relending to ultimate recipients are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having the authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated or unincorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Be fully bonded against losses occurring from theft, fraud, nonperformance, etc.

(2) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(3) Have a proven record of successfully assisting rural business and industry. Such record will normally consist of:

(i) Recent experience in loanmaking and servicing for loans that are similar in nature to this program;

(ii) A delinquency rate acceptable to FmHA on the loans in the intermediary's portfolio;

(iii) A background and expertise of the intermediary's staff that will be making and servicing the portfolio acceptable to FmHA; and

(iv) Capitalization of the intermediary (for making such loans) acceptable to FmHA.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the applicant.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State or local programs. The intermediary and each ultimate recipient must certify and document that the ultimate recipient is unable to finance the proposed project from their own resources or through commercial credit or other Federal, State or local programs at reasonable rates and terms.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing IRP loan(s) will not exceed $2,000,000 per intermediary.

(d) At least 51 percent of the outstanding interest in any intermediary and ultimate recipient must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38532, Sept. 19, 1990]

§§ 1948.104—1948.108 [Reserved]

§ 1948.109 Loan purposes.

(a) *Intermediaries.* FmHA loan funds will be used by the intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Prior to receiving FmHA's concurrence to make a loan to an ultimate recipient, the intermediary must certify to FmHA that any assistance to the ultimate recipient, involving FmHA-related funds, complies with the criteria in this section and § 1948.110 of this subpart.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for community development projects, the establishment of new businesses and/or the expansion of existing businesses, creation of employment opportunities and/or saving existing jobs. Additionally, the ultimate recipients must:

(i) Meet the objective and purpose of the program as described in § 1948.101(b) of this subpart,

(ii) To the maximum extent possible use labor of low-income persons, farm families, and displaced farm families needing additional income to supplement their farming operations, and

(iii) To the maximum extent possible be innovative in providing services and/or products for the public.

(2) Financial assistance involving FmHA loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or develepent cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of this subpart.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandary of aquatic animals or plants by private industry for commerical purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

§ 1948.110 Ineligible loan purposes.

(a) *Intermediaries.* FmHA loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has an application pending or has received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipient plus the total outstanding balance of any existing loans from IRP funds will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from intermediaries involving FmHA funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, recreation, or amusement centers.

(8) For any tourist, recreation, or amusement centers.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38533, Sept. 19, 1990]

§ 1948.111 Terms of loans to intermediaries.

(a) No loans to intermediaries shall be extended for a period exceeding 30 years. Principal payments on these loans will be made at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by FmHA, but not more than 3 years.

(b) The terms of loan repayment to intermediaries will be those stipulated in the loan agreement and/or promissory note, as agreed to and executed by FmHA and intermediaries.

§ 1948.112 Interest rates.

(a) Loans made by FmHA pursuant to this subpart shall bear interest at a fixed rate of one percent (1%) per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients shall be negotiated by those parties. Intermediaries are encouraged to make loans at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

(c) Interest income, service fees, and other authorized financing charges received by intermediaries operating relending programs may be used to pay for: The costs of administering the IRP, the provision of technical assistance to borrowers, the absorption of bad debts associated with IRP loans, and repayment of debt. Proposed budgets to cover the administrative costs of intermediaries must be submitted annually to FmHA. All proceeds in excess of those needed to cover authorized expenses, as described above, must revolve back into the IRP and be available for relending to eligible ultimate recipients.

§ 1948.113 Security.

(a) *Loans to intermediaries.* Unless otherwise approved by FmHA, security for the FmHA loan will be separate and apart from security for other loans for which the intermediary is either maker or payee. All loans to intermediaries will be adequately secured. Security for such loans may include but is not limited to:

(1) any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of FmHA; and

(2) any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of FmHA.

(b) *Loans from intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA loan.

(c) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security to protect the Government's interest.

(d) *Appraisals for security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries.* Real property serving as security will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1948.114 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient, or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA shall determine whether such ownership, influence or financial interest is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§ 1948.115 Post award requirements.

(a) Intermediaries receiving loans under this program shall be governed by these regulations, the Loan Agreement, the approved work plan, security interests, and any other conditions which the FmHA may impose in awarding a loan. Prior to making a loan commitment to an ultimate recipient, the intermediary must receive FmHA's concurrence in the proposed use of loan funds outlined in § 1948.128 of this Subpart.

(b) Unless otherwise specifically agreed to in writing by the FmHA, any loan funds held by an intermediary and any funds obtained from loaning FmHA-derived funds and recollecting them, that are not immediately needed by the intermediary for an ultimate recipient, should be deposited in an interest bearing account in a bank or other financial institution which will be covered by a form of federal deposit insurance. Any interest or income earned as a results of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

§1948.116 Fees and charges.

(a) *Late payment charges.* Unpaid principal or interest on the loan to the intermediary will be handled as specified in the Loan Agreements attached as Exhibit II to these regulations. Late payment charges on a loan to an ultimate recipient may be made when a loan payment has not been received within the customary timeframe allowed as agreed upon by the ultimate recipient and intermediary. The term "payment received" means that the payment in cash or check, money order, or similar medium has been received by the intermediary at its designated place of payment.

(b) *Documentation of fees.* All fees and charges must be specifically documented and justified on Form FmHA 1948-1, "Application for Loan (Intermediary Relending Program)," or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged intermediaries in similar circumstances in the ordinary course of business and are subject to FmHA review and concurrence.

(c) *Eligible packagers and payment of fees.* Packaging fees include services rendered by others in connection with preparation of the application and seeing the transaction through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and written approval.

§1948.117 Other regulatory requirements.

(a) *Intergovernmental consultation.* The Intermediary Relending Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject to intergovernmental consultation. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the FmHA loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's application for a loan, the intermediary must provide a completed Form FmHA 1940-20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan submitted with its loan application. FmHA will review the application, supporting materials, and any required Forms FmHA 1940-20, and initiate a Class II environmental assessment for the application. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or

problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply to the application. The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assessed will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chapter prior to FmHA's consent to use loan funds for an ultimate recipient. FmHA will prepare an Environmental Impact Statement for any application for a loan determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940-20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this Chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime FmHA loan funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this Chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d-2000d-4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1948.118 Loan agreements between FmHA and the intermediary.

A loan agreement must be executed by the intermediary and FmHA at loan closing for each loan. The loan agreement will be prepared by FmHA and reviewed by OGC prior to the loan closing. Part 1948, Subpart C, Exhibit II (available from the FmHA National Office or any FmHA State Office), may be used as a guide. The loan agreement, as a minimum, must contain the following provisions:

(a) The loan agreement will set out:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due of principal and/or interest if payment for either of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by FmHA does not constitute a waiver of default.

(5) Disbursement procedure. Disbursement of loan funds by FmHA to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. The intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be re-

quested by the intermediary in writing. The intermediary may use Form FmHA 440-11, "Estimate of Funds Needed for 30-Day Period Commencing ______," to show the amount of funds needed during the 30-day period." The date of such drawdown shall constitute the date the funds are advanced under the loan agreement for purposes of computing interest payments.

(6) Provisions regarding default. On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the FmHA:

(i) Failure of the intermediary to carry out or comply with the specific activities in its loan application as approved by FmHA, or loan terms and conditions, or any terms or conditions of the loan agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to FmHA.

(iii) The occurrence of:

(A) The intermediary's becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors;

(B) Proceedings for the appointment of a receiver, trustee or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it.

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or FmHA in connection with the financial assistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policy-making body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

(7) *Insurance requirements.* (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

(b) The intermediary will agree:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's written concurrence in the proposed use of loan funds.

(3) To maintain a separate ledger and segregated account for IRP funds.

(4) To FmHA reporting requirements on the intermediary by providing:

(i) An annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(ii) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA at its option may change this requirement to semiannual reports. These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans. The reports will include:

(A) Form FmHA 1951-4, "Report of IRP/RDLF Lending Activity" (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(B) Project Progress Review Narrative

(iii) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, for each loan made by such intermediary.

(iv) Proposed budget for the following year.

(v) Other reports as FmHA may require from time to time.

(5) Before the first relending of FmHA funds to the ultimate recipient, to obtain written FmHA approval of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments.

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(6) To obtain approval of FmHA before making any major changes in forms or policy.

(7) To secure the indebtedness by pledging its portfolio of investments derived from the proceeds of the loan award, and/or pledging its real and personal property, and other rights and interests as FmHA may require.

(8) To provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security to protect the Government's interest.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38533, Sept. 19, 1990]

§§ 1948.119—1948.121 [Reserved]

§ 1948.122 Application.

An application will consist of:

(a) Form FmHA 1948-1, "Application For Loan (Intermediary Relending Program)."

(b) A written work plan and other evidence FmHA requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(1) Document the intermediary's ability to administer an Intermediary Relending Program in accordance with

the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for FmHA's review and the terms of the contract and its duration must be sufficient to adequately service the FmHA loan through to its ultimate conclusion. If FmHA determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved.

(2) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an Intermediary Relending Program. This should include a statement of the source(s) of non-FmHA funds for administration of the intermediary's operations and financial assistance for projects.

(3) Include a proposal for adequately securing the FmHA loan. The proposal should specifically address those items of security outlined in § 1948.113 of this subpart.

(4) Include a detailed statement of the proposed use of FmHA loan funds. This should include an outline of what will constitute project eligibility for financial assistance the intermediary will make available to ultimate recipients.

(5) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify FmHA funding of its loan request.

(6) Include a list of proposed fees and other charges it will assess the ultimate recipients it funds.

(7) Demonstrate to FmHA's satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to FmHA's satisfaction that the intermediary has a proven record of obtaining private and/or philanthropic funds for the operation of similar programs to the one contained in this subsection.

(9) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan.

(c) Form FmHA 1940-20, "Request for Environmental Information," for all projects identified in the intermediary's plan that are Class I or Class II actions under Subpart G of Part 1940 of this Chapter.

(d) Comments from the State single point of contact, if the State has elected to review the program under Executive Order 12372, "Intergovernmental Review of Federal Programs."

(e) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP fund only and a separate set of projections that shows the applicant organization's total operations.

(g) A written agreement will be signed by the intermediary to assure that there is no misunderstanding concerning FmHA audit requirements.

(h) Form FmHA 400-1, "Equal Opportunity Agreement."

(i) Form FmHA 400-4, "Assurance Agreement."

(j) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(k) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs.

(l) Latest audit report, if available.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38533, Sept. 19, 1990]

§ 1948.123 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring FmHA assistance in this subpart may file applications with the FmHA National Office, Director, Business and Industry (B&I) Division, Washington, DC 20250. The Director, Business and Industry Division, may be contacted to discuss assembly, preparation, and processing of applications.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be reviewed and ranked quarterly and funded in the order of priority ranking. At the intermediary's direction FmHA may retain unsuccessful applications for consideration in subsequent reviews, through a total of 4 quarterly reviews.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries based on the following factors. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of FmHA, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in each paragraph or subparagraph. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph should be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—10 points.

(B) At least 25% but less than 50% of the total project cost—20 points.

(C) 50% or more of the total project cost—30 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-FmHA derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project costs—10 points.

(B) At least 25% but less than 50% of total project costs—20 points.

(C) 50% or more of total project costs—30 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in consumer price index (CPIU). The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)). Unemployment data used will be that published by The Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of 4:

(A) At least 100% but not more than 110%—5 points.

(B) At least 80% but less than 100%—10 points.

(C) below 80%—15 points.

(ii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points.

(B) At least 125% but less than 150%—10 points.

(C) 150% or more—15 points.

(iii) The intermediary will require as a condition of eligibility for a loan to an ultimate recipient that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line.

(A) At least 10% but less than 20% of the workforce—5 points.

(B) At least 20% but less than 30% of the workforce—10 points.

(C) 30% of the workforce or more—15 points.

(3) *Equity.* All assets of the IRP fund will serve as security for the IRP loan and the intermediary will contribute funds not derived from FmHA into the IRP fund along with the proceeds of the IRP loan. The amount of non-FmHA derived funds contributed to the IRP fund will equal the following percentage of the FmHA IRP loan:

(i) At least 5% but less than 15%—15 points.

(ii) At least 15% but less than 25%—30 points.

(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points.

(ii) At least 3 but less than 5 years—10 points.

(iii) At least 5 but less than 10 years—20 points.

(iv) 10 or more years—30 points.

(5) *Community representation.* The service area is not more than 10 counties and the intermediary utilizes local opinions and experience by including community representatives on its Board of Directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives or bankers, who reside in the service area and are not employees of the intermediary.

(i) At least 10% but less than 40% of the board members are community representatives—5 points.

(ii) At least 40% but less than 75% of the board members are community representatives—10 points.

(iii) At least 75% of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters. An assignment of points by the Administrator will be by memorandum stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38533, Sept. 19, 1990]

§ 1948.124 FmHA evaluation of application.

(a) FmHA will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). If FmHA so desires, a Form FmHA 2033-34, "Management System Card—Business and Industry," may be prepared in accordance with FmHA Instruction 2033-F.

(b) Applications will be organized in a loan file in accordance with FmHA Instruction 2033-A. The intermediary's Internal Revenue Service (IRS) tax number preceded by State and County code numbers will constitute the case number to be used on all FmHA forms.

(c) The FmHA Administrator or designee will complete Form FmHA 1948-2, IRP Project Summary, evaluate the application and make a determination whether: the intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there is a need for an environmental impact statement or environmental mitigation; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to provide the loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan.

(1) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verifica-

tion requirements, disbursement of funds, security requirements, and audit reports required.

(2) The letter of conditions will contain the following paragraphs:

> This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project of intermediary must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.
>
> This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $______.
>
> The intermediary must certify at loan closing that since FmHA's issuance of the letter of conditions there has been no material adverse change(s) in its financial condition nor any other material adverse change in the intermediary.
>
> The loan will be considered approved on the date a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you.
>
> Please complete and return the attached Form FmHA 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.
>
> If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA reserves the right to discontinue the processing of the application. The intermediary will be notified, in writing, by the Administrator or designee of any such discontinuances.

(3) The Administrator or designee is the only person authorized to execute the letter of conditions.

(d) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the Form FmHA 422-46 to the FmHA Administrator. If certain conditions cannot be met, the borrower may propose alternate conditions to FmHA. The Administrator or designee must concur with any changes made to the initially issued or proposed letter of conditions.

(e) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, FmHA will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this Chapter.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38534, Sept. 19, 1990]

§ 1948.125 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of Form FmHA 1940-1 is mailed to the intermediary. The Administrator or designee may request an obligation of funds when available and according to the following:

(a) Form FmHA 1940-1, authorizing funds to be reserved, may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan, and to enter into required agreements and has signed Form FmHA 1940-1.

(b) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940-1.

(c) The Administrator or designee will request an obligation of loan funds by signing Form FmHA 1940-1, contacting the Finance Office Appropriation Accounting Section by telephone, and then mailing a copy of the Form FmHA 1940-1 to the Finance Office.

(d) The obligation date and date the intermediary is notified of loan approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(e) Immediately after verifying by telephone contact with the Finance Office that funds have been reserved, the Administrator or designee will notify the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015-C (available in any FmHA State Office).

(f) The Administrator or designee will record the date of intermediary notification on the original of Form FmHA 1940-1 and include it as a permanent part of the official FmHA file.

(g) If a transfer of obligation of funds is necessary, complete Form FmHA 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and mail a copy to the Finance Office. An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purpose(s) for which FmHA funds will be used remain substantially unchanged.

§ 1948.126 Loan closing.

(a) After the letter of conditions has been issued and proposed closing documents have been prepared, FmHA will forward the loan docket to the Regional OGC in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, FmHA will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review and indexed and tabbed. The OGC will review the docket and furnish advice to FmHA on noted deficiencies. Upon receipt of the OGC's advice, FmHA will correct or cause to be corrected any noted deficiencies. Loans will be closed by FmHA with the assistance of the OGC Regional Attorney who will issue closing instructions detailing the requirements and any actions necessary to proceed with the loan closing.

(b) In all cases, the Administrator or designee will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and Loan Agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports. The intermediary's certifications will include the following:

(1) No major changes have been made in the intermediary's work plan except those approved in the interim by FmHA.

(2) All requirements of the letter of conditions have been met.

(3) Equity requirements have been met. A reconciliation of the intermediary's assets and net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(4) There has been no material adverse change in the intermediary's financial condition nor any material adverse change in the intermediary since the issuance of the letter of conditions. If there have been adverse changes, they must be explained by the intermediary. They may be waived, at the sole discretion of FmHA. Financial data must not be more than 60 days old at loan closing.

(c) FmHA personnel shall not sign any documents other than those specifically provided for in this subpart.

(d) The National Office will review any requests for changes to the letter of conditions. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved.

(e) At loan closing the intermediary will provide sufficient evidence to enable FmHA to ascertain that no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(f) When the loan has been closed, the administrator or designee will submit the security instruments, other documents used in closing, and a statement that administrative requirements have been met to the Regional Attorney. The Regional Attorney will review the submitted material and determine whether all legal requirements have been met.

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38534, Sept. 19, 1990]

§ 1948.127 [Reserved]

§ 1948.128 Requests to make loans to ultimate recipients.

(a) When an intermediary proposes to use funds obtained from FmHA to make a loan to an ultimate recipient, and prior to final approval of such loan, the intermediary will submit to FmHA a copy of the ultimate recipient's application and provide certification that the ultimate recipient is eligible; the proposed loan is for an eligible purpose; and the proposed loan complies with all applicable statutes and regulations. No commitment of loan funds to the ultimate recipient may be made by the intermediary until an affirmative decision on proceeding with funding to the ultimate recipient is rendered by FmHA.

(b) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the project a properly completed Form FmHA 1940-20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940-20, and complete the environmental review in accordance with § 1948.117 of this Subpart. The results of this review will be used by FmHA in making its decision on the request.

(c) The intermediary will provide, for FmHA review, all comments obtained in accordance with paragraph (a) of § 1948.117 of this Subpart, "Intergovernmental review."

(d) If FmHA determines it is unable to concur with the loan request, the intermediary will be informed in writing the reasons for denial.

§ 1948.129 [Reserved]

§ 1948.130 Non-Federal funds.

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and loan agreement, new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§§ 1948.131—1948.137 [Reserved]

§ 1948.138 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012-B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the FmHA designee and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§§ 1948.139—1948.142 [Reserved]

§ 1948.143 Appeals.

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this Chapter.

§§ 1948.144—1948.147 [Reserved]

§ 1948.148 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this Subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§ 1948.149 Exhibits.

The following documents may be used in connection with this program; they are incorporated into this Subpart and made a part hereof. They are not published in the FEDERAL REGISTER but may be obtained in any FmHA State Office or in the National Office.

(a) Exhibit I, "Note (Intermediary Relending Program)."

(b) Exhibit II, "Loan Agreement (Intermediary Relending Program)."

(c) Exhibit III, "Loan Docket."

(d) Exhibit IV, "Priority Scoresheet".

[53 FR 30647, Aug. 15, 1988, as amended at 55 FR 38534, Sept. 19, 1990]

§ 1948.150 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575-0130. In accordance with 5 CFR 1320, summarized below is the annualized public reporting burden for this regulation.

Sect. of Regulations (A)	Title (B)	Form No. (if any) (C)	Estimated No. of respondents (D)	Reports filed annually (E)	Total annual responses (d) × (e) (F)	Est. No. of man-hrs. per response (G)	Est. total man-hours (f) × (g) (H)
Reporting Requirements—No Forms							
1948.103(b)(1)	Evidence of 10% equity	Written	35	1	35	1.0	35.0
1948.103(b)(2)	Endorsement of the Governor	Written	35	1	35	1.0	35.0
1948.103(b)(5)	Evidence of ability to administer revolving loan program	Written	35	1	35	1.0	35.0
1948.103(c)(2)	Certification of lack of financing	Written	35	1	35	1.0	35.0
1948.109(a)	Certificate of Compliance	Written	10	On occasion	50	2.0	100.0
1948.114	Conflict of interest	Written	10	On occasion	50	1.0	50.0
1948.117(a)	State comments	Written	10	On occasion	50	1.5	75.0
1948.122(b)	Intermediary's work plan to demonstrate feasibilty of its operation.	Written plan	35	1	35	120	4200.0
1948.124(c)	Letter of Conditions	Written	15	1	15	1.5	22.5
1948.126	Loan Closing Certification	Written	10	1	10	3.5	35.0
1948.128	Certification to make loans to ultimate recipients	Written	10	On occasion	50	2.0	100.0
1948.143	Request for Appeal	Letter	5	1	5	2.0	10.0
Form Approved with this Docket							
1948.122	Application for Loan (Intermediary Relending Program)	1948-1	35	1	35	50.0	1750.0
Reporting Requirements Approved Under Other Numbers							
1948.117(b)(2)	Request for Environmental Information	1940-20 (0575-0094)					
1948.1118(b)(4)(ii)(A)	Report of IRP/RDLF Lending Activity	1951-4 (approval requested with 7 CFR 1951-R)					
1948.124(d)	Letter of Intent to Meet Conditions	442-46 (0575-0015)					
Recordkeeping Requirements							
Exh. I	Promissory Note		10			1.0	10.0
1948.118 Exh. II	Loan Agreement		10			1.5	15.0
	Total Reporting				440		6,482
	Total Recordkeeping						25
	Docket Total				440		6,507

EXHIBIT A—GRANT AGREEMENT—GROWTH MANAGEMENT AND HOUSING PLANNING FOR APPROVED DESIGNATED ENERGY IMPACTED AREAS

This Agreement is between

(Name), ————————————————

(Address),(Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA). Grantee has determined to undertake certain growth management and housing planning for energy impacted areas at an estimated cost of $——— and has duly authorized such planning. The Grantor agrees to grant to Grantee a sum not to exceed $——— subject to the terms and conditions established by the Grantor: provided, however, that any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) for the purpose only of defraying the planning costs as permitted by applicable Farmers Home Administration regulations:————————————————

Part A

Grantor and Grantee agree:

1. This agreement shall be effective when executed by both parties.

2. The scope of work set out below shall be completed prior to————————.

3. (a) Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount charged to the grant. Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary and would result in less cost to the Government in providing Federal-share funds or to the Grantee in providing its contributions. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(b) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal-share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improvement and renovation of space, and repair and maintenance of privately-owned vehicles.

(c) Grant funds shall not be used to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. (a) In accordance with Treasury Circular 1075, grant funds will be disbursed by the FmHA as cash advances on an as-needed basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A-102 revised for State and local governments.

(b) Cash advances to the Grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planning project.

(c) The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs.

(d) Federal funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days.

(e) Grantee shall provide satisfactory evidence to FmHA that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(f) Grant funds will be placed in a bank account(s). If for any reason grant funds are invested, income earned on such investment shall be identified as interest income on grant funds and forwarded to the Finance

Office, FmHA, St. Louis, Missouri, unless the Grantee is a State. "State" includes instrumentalities of a State but not political subdivisions of a State. A State Grantee is not accountable for interest earned on grant funds.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) As needed, but not more frequently than once every 30 days, an original and 2 copies of Standard Form 270, "Request for Advance or Reimbursement;"

(b) Quarterly, an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report according to the schedule below:

Period Date due

(c) Final, an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report according to the schedule below:

Period Date due

NOTE: Final reports may serve as the last quarterly reports.

(d) The Project Performance reports shall include but need not be limited to the following:

(i) A comparison of actual accomplishment to the objectives established for that period;

(ii) Reasons why established objectives were not met;

(iii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a Statement of the action taken or comtemplated and any Federal assistance needed to resolve the situation; and

(iv) Objectives established for the next reporting period.

(e) All Grantees except States shall submit an original of each report and one copy to the appropriate FmHA District Office. A State Grantee shall submit original reports to the appropriate FmHA State Office.

(f) The plan(s) developed under this grant shall be submitted to the appropriate Governor for incorporation into the State Investment Strategy for Energy Impacted Areas. The Governor will submit the plan and the State Investment Strategy to the appropriate FmHA State Office(s). The FmHA State Office will forward the plan and State Investment Strategy to the FmHA National Office for approval of the plan.

6. The Budget covered by this agreement is:

Budget categories	Federal funds	Non-Federal share		Total
		Cash	In-kind	
Direct charges:				
1. Personnel	$			
2. Fringe benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Others				
Total Direct Charges				
8. Indirect charges				
Total				

(a) In accordance with FMC 74-4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

(b) In accordance with OMB Circular A-102, Attachment K, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the State Director, Farmers Home Administration.

7. (a) The scope of work is described in the attached exhibit 1. The Grantee accepts responsibility for establishing a development process which will improve local conditions and alleviate problems associated with increased coal or uranium production in the Grantee areas. The Grantee shall:

(i) Develop a growth management and housing plan for assistance to approved designated area(s) impacted by increased coal or uranium production.

(ii) Contribute to development of a State Investment Strategy for Energy Impacted Areas.

(iii) Endeavor to coordinate and provide liaison with State development organizations where they exist.

(iv) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Part B

Grantee agrees:

1. To comply with property management standards established by Attachment N of OMB Circular A-102 for expendable and nonexpendable personal property "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(2) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of paragraph (4) below.

(3) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph (4), below.

(4) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other nontangible expendable property for which the Grantee has title.

(1) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(a) Activities sponsored by FmHA.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissable if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in 1(a)(4) above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount

of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(b) If the Grantee is instructed to dispose of the property other than as described in (1)(a)(4) above, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(c) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Sources of the property including grant or other agreement number.

(d) Whether title vests in the Grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(7) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other Federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

(e) Provide an audit report prepared in sufficient detail to allow Grantor to determine that funds have been used in compliance with the proposal any applicable laws and regulations and this agreement.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. To provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

5. To provide information as requested by the Grantor concerning the Grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

6. To account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes unless the Grantee is a State. See Part A 4(f) above.

7. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Part B 1.

8. To provide Grantor such periodic reports as it may require of Grantee operations by designated representative of the Grantor.

9. To execute Form FmHA 400-1, "Equal Opportunity Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirements.

10. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

11. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will, to the extent legally permissible, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

12. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

13. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

14. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

15. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

16. That the Grantee shall abide by the policies promulgated in OMB Circular A-102, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

17. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

Part C

Grantor agrees:

1. That it will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on ————————, 19——, has caused this agreement to be executed by its duly authorized ———————— and attested and its corporate seal affixed by its duly authorized ————————.

Attest:

Grantee:

By————————————————————

————————————————

(Title)

By————————————————————

————————————————

(Title)

Grantor:

United States of America Farmers Home Administration.

By————————————————————

————————————————

(Title)

(Approved by the Office of Management and Budget under control number 0575-0040)

[44 FR 35984, June 19, 1979, as amended at 47 FR 745, Jan. 7, 1982]

EXHIBIT B—GRANT AGREEMENT (PUBLIC BODIES)—FOR SITE DEVELOPMENT AND/OR SITE ACQUISITION FOR HOUSING AND/OR PUBLIC FACILITIES AND/OR SERVICES

This agreement dated ————————, 19–, between ———————————————— a public body corporate organized and operating under ———————————— (Authorizing State Statute)

Herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," Witnesseth:

Grantee has determined to undertake a project for site acquisition and/or site development as follows: ———————————————— (herein called project) to serve the approved designated energy impacted area under its jurisdiction at an estimated cost of $————, and has duly authorized the undertaking of such project;

Grantee is able to finance not more than $———— of the site acquisition and/or site development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee. Said sum has been committed to and by Grantee for such project acquisition and/or site development costs.

The Grantor agrees to grant to Grantee a sum not to exceed $———— subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) for the purpose only of defraying a part of the acquisition and/or site development costs, as defined by applicable Farmers Home Administration regulations:

Grantee agrees that Grantee will:

1. Cause said project to be completed within the total sums available to it, includ-

ing said grant, in accordance with the project plans and specifications and any necessary modifications thereof prepared by Grantee and approved by Grantor.

2. Permit periodic inspection of the project by a representative of Grantor.

3. Make the housing or public facility or services available to all persons in Grantee's service area without regard to race, color, national origin, religion, sex, maritial status, age, physical or mental handicap.

4. Use the real property including land and land improvements for authorized purposes of the grant as long as needed.

a. The Grantee shall obtain approval of the Grantor before using the real property for other purposes when the Grantee determines that the property is no longer for the original purposes.

b. When the real property is no longer needed as provided above, return all real property furnished or purchased wholly with Federal grant funds to the Grantor. In the case of property purchased in part with Federal grant funds, the Grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal Participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

5. Not use grant funds to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

6. Not use grant funds to pay for construction costs of housing or public facilities.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

7. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with Grant Funds.

a. The Grantee shall retain such property as long as there is a need for the property to accomplish the purpose of the grant. When there is no longer a need for the property to accomplish the purpose of the grant, the Grantee shall use the property in connection with other Federal grants it has received in the following order of priority.

(1) Other grant of the Grantor needing the property.

(2) Grants of other Federal agencies needing the property.

b. When the Grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(1) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The Grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) All other nonexpendable property. The Grantee may retain the property for its own use provided that a fair compensation is made to the Grantor. The amount of compensation shall be computed by applying the percentage of the Grantor participation in the grant program to the current fair market value of the property as determined by the Grantor.

c. If the Grantee has no need for the property, disposition shall be made as follows:

(1) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of b(1) above, the Grantee shall sell the property and reimburse the Grantor an amount which is computed in accordance with (3) below.

(2) Nonexpendable property with an acquisition cost of over $1,000. The Grantee shall request disposition instructions from Grantor.

(3) If disposition instructions are not issued within 120 days after reporting, the Grantee shall sell the property and reimburse the Grantor an amount which is computed by applying the percentage of the Grantor participation in the grant program to the sales proceeds. Further, the Grantee shall be permitted to retain $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

d. The Grantee's property management standards for nonexpendable personal property shall also include:

(1) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; sources of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(2) A physical inventory of property shall be taken and the result reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

8. Provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supporting activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

9. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee governments which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts and transcripts.

10. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

11. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this agreement.

12. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies of instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

13. Not encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item 5 above.

14. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a designated representative of the Grantor.

15. Execute Form FHA 400-1, "Equal Opportunity Agreement," Form FHA 400-4, "Nondiscrimination Agreement," and any other agreements required by Grantor to implement the civil rights requirements. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

16. Include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

17. In Contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

18. Include in all contracts in excess of $2,500 a provision for compliance with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. Grantee shall report any violations of such regulation and standards to the Grantor and the local Internal Revenue Service field office.

19. Include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clear Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

20. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and the demand of Grantor, will, to the extent legally permissible, repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or

equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

21. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

22. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

23. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received are committed, or are applied for from other sources, public and private.

24. That Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

25. That the Grantee shall abide by the policies promulgated in OMB Circular A-95, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

26. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

Grantor agrees that it will:

1. Assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

2. In its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Grantee on the date first above written has caused this agreement to be executed by its duly authorized——————————
and attested and its corporate seal affixed by its duly authorized——————————
Attest:
(Seal)
By ——————————————————

——————————————————

(Title)

Grantee

——————————————————

By ——————————————————

——————————————————

(Title)

Grantor
United States of America
Farmers Home Administration

By ——————————————————

——————————————————

(Title)

(Approved by the Office of Management and Budget under control number 0575-0040)

[44 FR 35984, June 19, 1979, as amended at 47 FR 745, Jan. 7, 1982]

Subpart C—Intermediary Relending Program (IRP)

SOURCE: 53 FR 30647, Aug. 15, 1988, unless otherwise noted.

§ 1948.101 Introduction.

(a) This subpart contains regulations for loans made by the Farmers Home Administration (FmHA) to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with Subpart R of Part 1951 of this chapter.

(b) The purpose of the program is to finance business facilities and community development projects in rural areas. This purpose is achieved through loans made by FmHA to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development in a rural area. It is anticipated that businesses assisted through this program will, to the maximum extent practicable, use farm labor and products as well as provide services to the farm community.

(c) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for processing activities unless otherwise delegated by the Administrator.

§ 1948.102 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Applicant.* The intermediary applying to FmHA for loan funds for relending to ultimate recipients for business facilities and community development in a rural area.

(2) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients pursuant to FmHA requirements found in § 1948.103.

(3) *Letter of Conditions.* FmHA's letter of proposed terms and conditions to the intermediary which when accepted by the intermediary provides the binding conditions under which FmHA will make a loan to the intermediary.

(4) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(5) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(6) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(7) *Principals of intermediary.* Include members, officers, directors, entities, and other entities directly involved in the operation and management of an intermediary organization.

(8) *Ultimate recipient.* The entity or individual receiving financial assistance from the intermediary.

(9) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(10) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(12) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(13) *Intermediary Relending Program (IRP).* A program operated by an intermediary whereby the intermediary uses loan funds received from FmHA, along with any other available funds, to make loans to ultimate recipients. Relending programs will normally establish revolving funds so that income from loans made to ultimate recipients, in excess of necessary operating expenses and debt payments, will be used to make additional loans to ultimate recipients.

(b) *Abbreviations.* The following abbreviations are applicable to this subpart:

(1) *B&I*—Business and Industry

(2) *FmHA*—Farmers Home Administration

(3) *IRP*—Intermediary Relending Program

(4) *OGC*—Office of the General Counsel

(5) *OIG*—Office of Inspector General

(6) *RDLF*—Rural Development Loan Fund

(7) *USDA*—United States Department of Agriculture

§ 1948.103 Eligibility requirements.

(a) The intermediaries which may receive FmHA loan funds for relending to ultimate recipients are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having the authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated or unincorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Be fully bonded against losses occurring from theft, fraud, nonperformance, etc.

(2) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(3) Have a proven record of successfully assisting rural business and industry. Such record will normally consist of:

(i) Recent experience in loanmaking and servicing for loans that are similar in nature to this program;

(ii) A delinquency rate acceptable to FmHA on the loans in the intermediary's portfolio;

(iii) A background and expertise of the intermediary's staff that will be making and servicing the portfolio acceptable to FmHA; and

(iv) Capitalization of the intermediary (for making such loans) acceptable to FmHA.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the applicant.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State or local programs. The intermediary and each ultimate recipient must certify and document that the ultimate recipient is unable to finance the proposed project from their own resources or through commercial credit or other Federal, State or local programs at reasonable rates and terms.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing FmHA loan(s) will not exceed $3,000,000 per intermediary.

(d) At least 51 percent of the outstanding interest in any intermediary and ultimate recipient must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§§ 1948.104—1948.108 [Reserved]

§ 1948.109 Loan purposes.

(a) *Intermediaries.* FmHA loan funds will be used by the intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Prior to receiving FmHA's concurrence to make a loan to an ultimate recipient, the intermediary must certify to FmHA that any assistance to the ultimate recipient, involving

FmHA-related funds, complies with the criteria in this section and § 1948.110 of this subpart.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for community development projects, the establishment of new businesses and/or the expansion of existing businesses, creation of employment opportunities and/or saving existing jobs. Additionally, the ultimate recipients must:

(i) Meet the objective and purpose of the program as described in § 1948.101(b) of this subpart,

(ii) To the maximum extent possible use labor of low-income persons, farm families, and displaced farm families needing additional income to supplement their farming operations, and

(iii) To the maximum extent possible be innovative in providing services and/or products for the public.

(2) Financial assistance involving FmHA loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or developent cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of this subpart.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandary of aquatic animals or plants by private industry for commerical purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

§ 1948.110 Ineligible loan purposes.

(a) *Intermediaries.* FmHA loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipient plus the total outstanding balance of any existing FmHA financial assistance consisting of loans and guarantees will not

exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from intermediaries involving FmHA funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, recreation, or amusement centers.

(8) For any tourist, recreation, or amusement centers.

§ 1948.111 Terms of loans to intermediaries.

(a) No loans to intermediaries shall be extended for a period exceeding 30 years. Principal payments on these loans will be made at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by FmHA, but not more than 3 years.

(b) The terms of loan repayment to intermediaries will be those stipulated in the loan agreement and/or promissory note, as agreed to and executed by FmHA and intermediaries.

§ 1948.112 Interest rates.

(a) Loans made by FmHA pursuant to this subpart shall bear interest at a fixed rate of one percent (1%) per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients shall be negotiated by those parties. Intermediaries are encouraged to make loans at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

(c) Interest income, service fees, and other authorized financing charges received by intermediaries operating relending programs may be used to pay for: The costs of administering the IRP, the provision of technical assistance to borrowers, the absorption of bad debts associated with IRP loans, and repayment of debt. Proposed budgets to cover the administrative costs of intermediaries must be submitted annually to FmHA. All proceeds in excess of those needed to cover authorized expenses, as described above, must revolve back into the IRP and be available for relending to eligible ultimate recipients.

§ 1948.113 Security.

(a) *Loans to intermediaries.* Unless otherwise approved by FmHA, security for the FmHA loan will be separate and apart from security for other loans for which the intermediary is either maker or payee. All loans to intermediaries will be adequately secured. Security for such loans may include but is not limited to:

(1) any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of FmHA; and

(2) any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of FmHA.

(b) *Loans from intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA loan.

(c) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security to protect the Government's interest.

(d) *Appraisals for security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries.* Real property serving as security will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1948.114 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient, or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA shall determine whether such ownership, influence or financial interest is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§ 1948.115 Post award requirements.

(a) Intermediaries receiving loans under this program shall be governed by these regulations, the Loan Agreement, the approved work plan, security interests, and any other conditions which the FmHA may impose in awarding a loan. Prior to making a loan commitment to an ultimate recipient, the intermediary must receive FmHA's concurrence in the proposed use of loan funds outlined in § 1948.128 of this Subpart.

(b) Unless otherwise specifically agreed to in writing by the FmHA, any loan funds held by an intermediary and any funds obtained from loaning FmHA-derived funds and recollecting them, that are not immediately needed by the intermediary for an ultimate recipient, should be deposited in an interest bearing account in a bank or other financial institution which will be covered by a form of federal deposit insurance. Any interest or income earned as a results of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

§1948.116 Fees and charges.

(a) *Late payment charges.* Unpaid principal or interest on the loan to the intermediary will be handled as specified in the Loan Agreements attached as Exhibit II to these regulations. Late payment charges on a loan to an ultimate recipient may be made when a loan payment has not been received within the customary timeframe allowed as agreed upon by the ultimate recipient and intermediary. The term "payment received" means that the payment in cash or check, money order, or similar medium has been received by the intermediary at its designated place of payment.

(b) *Documentation of fees.* All fees and charges must be specifically documented and justified on Form FmHA 1948-1, "Application for Loan (Intermediary Relending Program)," or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged intermediaries in similar circumstances in the ordinary course of business and are subject to FmHA review and concurrence.

(c) *Eligible packagers and payment of fees.* Packaging fees include services rendered by others in connection with preparation of the application and seeing the transaction through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and written approval.

§1948.117 Other regulatory requirements.

(a) *Intergovernmental consultation.* The Intermediary Relending Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject to intergovernmental consultation. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the FmHA loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's application for a loan, the intermediary must provide a completed Form FmHA 1940-20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan submitted with its loan application. FmHA will review the application, supporting materials, and any required Forms FmHA 1940-20, and initiate a Class II environmental assessment for the application. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply to the application. The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assessed will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chap-

ter prior to FmHA's consent to use loan funds for an ultimate recipient. FmHA will prepare an Environmental Impact Statement for any application for a loan determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940-20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this Chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime FmHA loan funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this Chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d-2000d-4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1948.118 Loan agreements between FmHA and the intermediary.

A loan agreement must be executed by the intermediary and FmHA at loan closing for each loan. The loan agreement will be prepared by FmHA and reviewed by OGC prior to the loan closing. Part 1948, Subpart C, Exhibit II (available from the FmHA National Office or any FmHA State Office), may be used as a guide. The loan agreement, as a minimum, must contain the following provisions:

(a) The loan agreement will set out:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due of principal and/or interest if payment for either of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by FmHA does not constitute a waiver of default.

(5) Disbursement procedure. Disbursement of loan funds by FmHA to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. The intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be requested by the intermediary in writing. The intermediary may use Form FmHA 440-11, "Estimate of Funds Needed for 30-Day Period Commencing ______," to show the amount of funds needed during the 30-day period." The date of such drawdown shall constitute the date the funds are advanced under the loan agreement for purposes of computing interest payments.

(6) Provisions regarding default. On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable

law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the FmHA:

(i) Failure of the intermediary to carry out or comply with the specific activities in its loan application as approved by FmHA, or loan terms and conditions, or any terms or conditions of the loan agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to FmHA.

(iii) The occurrence of:

(A) The intermediary's becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors;

(B) Proceedings for the appointment of a receiver, trustee or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it.

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or FmHA in connection with the financial assistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policy-making body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

(7) *Insurance requirements.* (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

(b) The intermediary will agree:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's written concurrence in the proposed use of loan funds.

(3) To maintain a separate ledger and segregated account for IRP funds.

(4) To FmHA reporting requirements on the intermediary by providing:

(i) An annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(ii) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA at its option may change this requirement to semiannual reports. These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans. The reports will include:

(A) Form FmHA 1951-4, "Report of IRP/RDLF Lending Activity" (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(B) Project Progress Review Narrative

(iii) An annual report on the extent on which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(iv) Proposed budget for the following year.

(v) Other reports as FmHA may require from time to time.

(5) Before the first relending of FmHA funds to the ultimate recipient, to obtain written FmHA approval of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments.

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(6) To obtain approval of FmHA before making any major changes in forms or policy.

(7) To secure the indebtedness by pledging its portfolio of investments derived from the proceeds of the loan award, and/or pledging its real and personal property, and other rights and interests as FmHA may require.

(8) To provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security to protect the Government's interest.

§§ 1948.119—1948.121 [Reserved]

§ 1948.122 Application.

An application will consist of:

(a) Form FmHA 1948-1, "Application For Loan (Intermediary Relending Program)."

(b) A written work plan and other evidence FmHA requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(1) Document the intermediary's ability to administer an Intermediary Relending Program in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for FmHA's review and the terms of the contract and its duration must be sufficient to adequately service the FmHA loan through to its ultimate conclusion. If FmHA determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved.

(2) Document the intermediary's ability to commit financial resources

under the control of the intermediary to the establishment of an Intermediary Relending Program. This should include a statement of the source(s) of non-FmHA funds for administration of the intermediary's operations and financial assistance for projects.

(3) Include a proposal for adequately securing the FmHA loan. The proposal should specifically address those items of security outlined in § 1948.113 of this subpart.

(4) Include a detailed statement of the proposed use of FmHA loan funds. This should include an outline of what will constitute project eligibility for financial assistance the intermediary will make available to ultimate recipients.

(5) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify FmHA funding of its loan request.

(6) Include a list of proposed fees and other charges it will assess the ultimate recipients it funds.

(7) Demonstrate to FmHA's satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to FmHA's satisfaction that the intermediary has a proven record of obtaining private and/or philanthropic funds for the operation of similar programs to the one contained in this subsection.

(9) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan.

(c) Form FmHA 1940-20, "Request for Environmental Information," for all projects identified in the intermediary's plan that are Class I or Class II actions under Subpart G of Part 1940 of this Chapter.

(d) Comments from the State single point of contact, if the State has elected to review the program under Executive Order 12372, "Intergovernmental Review of Federal Programs."

(e) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections.

(g) A written agreement will be signed by the intermediary to assure that there is no misunderstanding concerning FmHA audit requirements.

(h) Form FmHA 400-1, "Equal Opportunity Agreement."

(i) Form FmHA 400-4, "Assurance Agreement."

(j) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(k) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs.

(l) Latest audit report, if available.

§ 1948.123 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring FmHA assistance in this subpart may file applications with the FmHA National Office, Director, Business and Industry (B&I) Division, Washington, DC 20250. The Director, Business and Industry Division, may be contacted to discuss assembly, preparation, and processing of applications.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be considered in the order received.

(c) *Loan priorities.* Priority consideration will be given to intermediaries whose written plan, as required by § 1948.122, demonstrates that the intermediary:

(1) Will provide financial assistance to ultimate recipients that provide the greatest benefit to low-income persons, farm families, and displaced farm families.

(2) Will involve the most financial assistance from other sources in providing assistance to the ultimate recipients as provided by this program.

(d) *Timeframe for processing applications for loans.* All loan applications must be approved or disapproved, and the intermediary notified in writing, not later than 60 calendar days after receipt of a completed application.

(1) If an application is not complete, the intermediary will be notified, in writing, not later than 20 calendar days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(2) When an application is disapproved, the written notification to the intermediary will state the reason(s) for disapproval.

(3) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the intermediary of such action within 15 calendar days after the reversal/revision decision is made.

§ 1948.124 FmHA evaluation of application.

(a) FmHA will prepare Form FmHA 2033-34, "Management System Card—Business and Industry," in accordance with FmHA Instruction 2033-F.

(b) Applications will be organized in a loan file in accordance with FmHA Instruction 2033-A. The intermediary's Internal Revenue Service (IRS) tax number preceded by State and County code numbers will constitute the case number to be used on all FmHA forms.

(c) The FmHA Administrator or designee will evaluate the application and make a determination whether: the intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there is a need for an environmental impact statement or environmental mitigation; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to provide the loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan.

(1) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verification requirements, disbursement of funds, security requirements, and audit reports required.

(2) The letter of conditions will contain the following paragraphs:

> This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project of intermediary must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.
>
> This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $____.
>
> The intermediary must certify at loan closing that since FmHA's issuance of the letter of conditions there has been no material adverse change(s) in its financial condition nor any other material adverse change in the intermediary.
>
> The loan will be considered approved on the date a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you.
>
> Please complete and return the attached Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.
>
> If the conditions set forth in this letter are not met within ____ days from the date hereof, the processing of the application is automatically terminated.

(3) The Administrator or designee is the only person authorized to execute the letter of conditions.

(d) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the Form FmHA 422-46 to the FmHA Administrator. If certain conditions cannot be met, the borrower may propose alternate conditions to FmHA. The Administrator or designee must concur with any changes made to the initially issued or proposed letter of conditions.

(e) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, FmHA will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this Chapter.

§ 1948.125 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of Form FmHA 1940-1 is mailed to the intermediary. The Administrator or designee may request an obligation of funds when available and according to the following:

(a) Form FmHA 1940-1, authorizing funds to be reserved, may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan, and to enter into required agreements and has signed Form FmHA 1940-1.

(b) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940-1.

(c) The Administrator or designee will request an obligation of loan funds by signing Form FmHA 1940-1, contacting the Finance Office Appropriation Accounting Section by telephone, and then mailing a copy of the Form FmHA 1940-1 to the Finance Office.

(d) The obligation date and date the intermediary is notified of loan approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(e) Immediately after verifying by telephone contact with the Finance Office that funds have been reserved, the Administrator or designee will notify the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015-C (available in any FmHA State Office).

(f) The Administrator or designee will record the date of intermediary notification on the original of Form FmHA 1940-1 and include it as a permanent part of the official FmHA file.

(g) If a transfer of obligation of funds is necessary, complete Form FmHA 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and mail a copy to the Finance Office. An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purpose(s) for which FmHA funds will be used remain substantially unchanged.

§ 1948.126 Loan closing.

(a) After the letter of conditions has been issued and proposed closing documents have been prepared, FmHA will forward the loan docket to the Regional OGC in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, FmHA will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review and indexed and tabbed. The OGC will review the docket and furnish advice to FmHA on noted deficiencies. Upon receipt of the OGC's advice, FmHA will correct or cause to be corrected any noted deficiencies. Loans will be closed by FmHA with the assistance of the OGC Regional Attorney who will issue closing instructions detailing the requirements and any actions necessary to proceed with the loan closing.

(b) In all cases, the Administrator or designee will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and Loan Agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports. The intermediary's certifications will include the following:

(1) No major changes have been made in the intermediary's work plan except those approved in the interim by FmHA.

(2) All requirements of the letter of conditions have been met.

(3) Equity requirements have been met. A reconciliation of the intermediary's assets and net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(4) There has been no material adverse change in the intermediary's financial condition nor any material adverse change in the intermediary since the issuance of the letter of conditions. If there have been adverse changes, they must be explained by the intermediary. They may be waived, at the sole discretion of FmHA. Financial data must not be more than 60 days old at loan closing.

(c) FmHA personnel shall not sign any documents other than those specifically provided for in this subpart.

(d) The National Office will review any requests for changes to the letter of conditions. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved.

(e) At loan closing the intermediary will provide sufficient evidence to enable FmHA to ascertain that no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

§ 1948.127 [Reserved]

§ 1948.128 Requests to make loans to ultimate recipients.

(a) When an intermediary proposes to use funds obtained from FmHA to make a loan to an ultimate recipient, and prior to final approval of such loan, the intermediary will submit to FmHA a copy of the ultimate recipient's application and provide certification that the ultimate recipient is eligible; the proposed loan is for an eligible purpose; and the proposed loan complies with all applicable statutes and regulations. No commitment of loan funds to the ultimate recipient may be made by the intermediary until an affirmative decision on proceeding with funding to the ultimate recipient is rendered by FmHA.

(b) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the project a properly completed Form FmHA 1940-20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940-20, and complete the environmental review in accordance with § 1948.117 of this Subpart. The results of this review will be used by FmHA in making its decision on the request.

(c) The intermediary will provide, for FmHA review, all comments obtained in accordance with paragraph (a) of § 1948.117 of this Subpart, "Intergovernmental review."

(d) If FmHA determines it is unable to concur with the loan request, the intermediary will be informed in writing the reasons for denial.

§ 1948.129 [Reserved]

§ 1948.130 Non-Federal funds.

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and loan agreement, new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§§ 1948.131—1948.137 [Reserved]

§ 1948.138 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012-B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the FmHA designee and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§§ 1948.139—1948.142 [Reserved]

§ 1948.143 Appeals.

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this Chapter.

§§ 1948.144—1948.147 [Reserved]

§ 1948.148 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this Subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§ 1948.149 Exhibits.

The following documents may be used in connection with this program; they are incorporated into this Subpart and made a part hereof. They are not published in the FEDERAL REGISTER but may be obtained in any FmHA State Office or in the National Office.

(a) Exhibit I, "Note (Intermediary Relending Program)."

(b) Exhibit II, "Loan Agreement (Intermediary Relending Program)."

(c) Exhibit III, "Loan Docket."

§ 1948.150 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575-0130. In accordance with 5 CFR 1320, summarized below is the annualized public reporting burden for this regulation.

Sect. of Regulations (A)	Title (B)	Form No. (if any) (C)	Estimated No. of respondents (D)	Reports filed annually (E)	Total annual responses (d) × (e) (F)	Est. No. of man-hrs per response (G)	Est. total man-hours (f) × (g) (H)
Reporting Requirements—No Forms							
1948.103(b)(1)	Evidence of 10% equity.	Written	35	1	35	1.0	35.0

Sect. of Regulations (A)	Title (B)	Form No. (if any) (C)	Estimated No. of respondents (D)	Reports filed annually (E)	Total annual responses (d) × (e) (F)	Est. No. of man-hrs. per response (G)	Est. total man-hours (f) × (g) (H)
1948.103(b)(2)	Endorsement of the Governor.	Written	35	1	35	1.0	35.0
1948.103(b)(5)	Evidence of ability to administer revolving loan program.	Written	35	1	35	1.0	35.0
1948.103(c)(2)	Certification of lack of financing.	Written	35	1	35	1.0	35.0
1948.109(a)	Certificate of Compliance.	Written	10	On occasion	50	2.0	100.0
1948.114	Conflict of interest	Written	10	On occasion	50	1.0	50.0
1948.117(a)	State comments	Written	10	On occasion	50	1.5	75.0
1948.122(b)	Intermediary's work plan to demonstrate feasibility of its operation.	Written plan	35	1	35	120	4200.0
1948.124(c)	Letter of Conditions	Written	15	1	15	1.5	22.5
1948.126	Loan Closing Certification.	Written	10	1	10	3.5	35.0
1948.128	Certification to make loans to ultimate recipients.	Written	10	On occasion	50	2.0	100.0
1948.143	Request for Appeal	Letter	5	1	5	2.0	10.0
Form Approved with this Docket							
1948.122	Application for Loan (Intermediary Relending Program).	1948-1	35	1	35	50.0	1750.0
Reporting Requirements Approved Under Other Numbers							
1948.117(b)(2)	Request for Environmental Information.	1940-20 (0575-0094).					
1948.1118(b)(4)(ii)(A)	Report of IRP/RDLF Lending Activity.	1951-4 (approval requested with 7 CFR 1951-R).					
1948.124(d)	Letter of Intent to Meet Conditions.	442-46 (0575-0015).					
Recordkeeping Requirements							
Exh. I	Promissory Note		10			1.0	10.0
1948.118 Exh. II	Loan Agreement		10			1.5	15.0
	Total Reporting				440		6,482
	Total Recordkeeping						25
	Docket Total				440		6,507

PART 1949 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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